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2 IN THE UNITED STATES DISTRICT COURT  
3 FOR THE NORTHERN DISTRICT OF OHIO  
4 EASTERN DIVISION

5 -----X

IN RE: NATIONAL PRESCRIPTION MDL No. 2804  
6 OPIATE LITIGATION,

Case No. 17-MD-2804

7 This document relates to:

8 All Cases Hon. Dan A. Polster

9 -----X

10 \* HIGHLY CONFIDENTIAL \*

11 \* SUBJECT TO FURTHER CONFIDENTIALITY REVIEW \*

12 VIDEOTAPED DEPOSITION

13 OF

14 LACEY R. KELLER

15 New York, New York

16 Thursday, June 13, 2019

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21

22

23

Reported by:

24 ANNETTE ARLEQUIN, CCR, RPR, CRR, RSA

25

Page 2	Page 4
<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5 June 13, 2019</p> <p>6 9:10 a.m.</p> <p>7</p> <p>8 HIGHLY CONFIDENTIAL - SUBJECT TO</p> <p>9 FURTHER CONFIDENTIALITY REVIEW</p> <p>10 videotaped deposition of LACEY R.</p> <p>11 KELLER, held at the offices of</p> <p>12 KIRKLAND &amp; ELLIS LLP, 601 Lexington</p> <p>13 Avenue, New York, New York, pursuant to</p> <p>14 Notice, before Annette Arlequin, a</p> <p>15 Certified Court Reporter, a Registered</p> <p>16 Professional Reporter, a Realtime</p> <p>17 Systems Administrator, a Certified</p> <p>18 Realtime Reporter, and a Notary Public</p> <p>19 of the State of New York and New</p> <p>20 Jersey.</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1</p> <p>2 A P P E A R A N C E S(Cont'd.):</p> <p>3</p> <p>4 KIRKLAND &amp; ELLIS LLP</p> <p>5 Counsel for Allergan Finance</p> <p>6 1301 Pennsylvania Avenue, N.W.</p> <p>7 Washington, D.C. 20004</p> <p>8 BY: JENNIFER LEVY, ESQ.</p> <p>9 Jennifer.levy@kirkland.com</p> <p>10 BY: CATIE VENTURA, ESQ.</p> <p>11 Catie.ventura@kirkland.com</p> <p>12</p> <p>13 O'MELVENY &amp; MYERS LLP</p> <p>14 Counsel for Janssen Pharmaceutical and</p> <p>15 Johnson &amp; Johnson</p> <p>16 1999 Avenue of the Stars - 8th Floor</p> <p>17 Los Angeles, California 90067-6035</p> <p>18 BY: AMY R. LUCAS, ESQ.</p> <p>19 Alucas@omm.com</p> <p>20 BY: J. KEITH KOBYLKA, ESQ.</p> <p>21 (Telephonically/realtime stream)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
Page 3	Page 5
<p>1</p> <p>2 A P P E A R A N C E S:</p> <p>3</p> <p>4 SIMMONS HANLY CONROY LLC</p> <p>5 Counsel for Plaintiffs</p> <p>6 112 Madison Avenue, 7th floor</p> <p>7 New York, New York 10016-7416</p> <p>8 BY: JAYNE CONROY, ESQ.</p> <p>9 JConroy@simmonsfirm.com</p> <p>10 BY: LAURA L. FITZPATRICK, ESQ.</p> <p>11 Lfitzpatrick@simmonsfirm.com</p> <p>12 - and -</p> <p>13 MOTLEY RICE LLC</p> <p>14 Counsel for Plaintiffs</p> <p>15 28 Bridgeside Boulevard</p> <p>16 Mt. Pleasant, South Carolina 29464</p> <p>17 BY: JAMES W. LEDLIE, ESQ.</p> <p>18 Jledlie@motleyrice.com</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1</p> <p>2 A P P E A R A N C E S(Cont'd.):</p> <p>3</p> <p>4 MORGAN LEWIS &amp; BOCKIUS LLP</p> <p>5 Counsel for Teva, Cephalon and Actavis</p> <p>6 1701 Market Street</p> <p>7 Philadelphia, Pennsylvania 19103-2921</p> <p>8 BY: ADAM HAMMOUD, ESQ.</p> <p>9 Adam.hammoud@morganlewis.com</p> <p>10</p> <p>11 ARNOLD &amp; PORTER KAYE SCHOLER LLP</p> <p>12 Counsel for Endo Health Solutions Endo</p> <p>13 Pharmaceuticals, Inc.; Par Pharmaceutical</p> <p>14 Companies, Inc. f/k/a Par Pharmaceutical</p> <p>15 Holdings, Inc.</p> <p>16 601 Massachusetts Avenue N.W.</p> <p>17 Washington, D.C. 20001-3743</p> <p>18 BY: JOANNA PERSIO, ESQ.</p> <p>19 Joanna.persio@arnoldporter.com</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

Page 6	Page 8
<p>1 2 A P P E A R A N C E S(Cont'd.): 3 DECHERT LLP 4 Counsel for Purdue Pharmaceuticals 5 Three Bryant Park 6 1095 Avenue of the Americas 7 New York, New York 10036-6797 8 BY: DEBRA D. O'GORMAN, ESQ. 9 Debra.ogorman@dechert.com 10 11 ZUCKERMAN SPAEDER LLP 12 Counsel for CVS Indiana, LLC and CVS RX 13 Services, Inc. 14 1800 M Street N.W. - Suite 1000 15 Washington, D.C. 20036-5807 16 BY: PAUL B. HYNES, JR., ESQ. 17 Phynes@zuckerman.com 18 19 MORGAN LEWIS &amp; BOCKIUS LLP 20 Counsel for Rite Aid of Maryland 21 1701 Market Street 22 Philadelphia, Pennsylvania 19103-2921 23 BY: JOHN P. LAVELLE, JR., Partner 24 John.lavelle@morganlewis.com 25</p>	<p>1 2 A P P E A R A N C E S(Cont'd.): 3 BARTLIT BECK LLP 4 Counsel for Walgreens 5 54 West Hubbard Street - Suite 300 6 Chicago, IL 60654 7 BY: PETER B. BENSINGER, JR., ESQ. 8 Peter.bensinger@bartlitt-beck.com 9 (Telephonically/realtime stream.) 10 11 FOLEY LARDNER LLP 12 Counsel for Anda, Inc. 13 111 Huntington Avenue - Suite 2500 14 Boston, MA 02199-7610 15 BY: GRAHAM D. WELCH, ESQ. 16 Gwelch@foley.com 17 (Telephonically/realtime stream.) 18 19 BARNES &amp; THORNBURG LLP 20 Counsel for H.D. Smith 21 11 South Meridian Street 22 Indianapolis Indiana 46204-3535 23 BY: KATHLEEN L. MATSOUKAS, ESQ. 24 Kathleen.matsoukas@btlaw.com 25 (Telephonically/realtime stream.)</p>
Page 7	Page 9
<p>1 2 A P P E A R A N C E S(Cont'd.): 3 ROPES &amp; GRAY LLP 4 Counsel for Mallinckrodt 5 Prudential Tower 6 800 Boylston Street 7 Boston, Massachusetts 02199 8 BY: JOSH GOLDSTEIN, ESQ. 9 Joshua.goldstein@ropesgray.com 10 BY: FEIFEI (ANDREA) REN, ESQ. 11 Andrea.Ren@ropesgray.com 12 13 COVINGTON &amp; BURLING LLP 14 Counsel for McKesson 15 One CityCenter 16 850 Tenth Street, N.W. 17 Washington D.C. 20001-4956 18 BY: CLAIRE CATALANO DEAN, ESQ. 19 ccdean@cov.com 20 21 22 23 24 25</p>	<p>1 2 A P P E A R A N C E S(Cont'd.): 3 4 LOCKE LORD LLP 5 Counsel for Henry Schein, Inc. and 6 Henry Schein Medical Systems, Inc. 7 2200 Ross Avenue - Suite 2800 8 Dallas, Texas 75201 9 BY: BRANDAN MONTMINY, ESQ. 10 Brandan.montminy@lockelord.com 11 (Telephonically/realtime stream.) 12 13 ALSO PRESENT: 14 15 VINCE ROSICA, Golkow, Legal Video Specialist 16 DAN LAWLOR, Golkow, Legal Video Specialist 17 18 19 20 21 22 23 24 25</p>

Page 10

1  
2 IT IS HEREBY STIPULATED AND  
3 AGREED by and between the attorneys for  
4 the respective parties herein, that  
5 filing and sealing be and the same are  
6 hereby waived;  
7 IT IS FURTHER STIPULATED AND  
8 AGREED that all objections, except as  
9 to the form of the question, shall be  
10 reserved to the time of the trial;  
11 IT IS FURTHER STIPULATED AND  
12 AGREED that the within deposition may  
13 be sworn to and signed before any  
14 officer authorized to administer an  
15 oath, with the same force and effect as  
16 if signed and sworn to before the  
17 Court.  
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Page 11

1  
2 THE VIDEOGRAPHER: We are now on  
3 the record. My name is Vince Rosica.  
4 I'm a videographer for Golkow  
5 Litigation Services.  
6 Today's date is June 13, 2019,  
7 and the time is 9:10 a.m.  
8 This video deposition is being  
9 held in New York, New York, in the  
10 matter of National Prescription Opiate  
11 Litigation, MDL No. 2804, for the  
12 United States District Court for the  
13 Northern District of Ohio, Eastern  
14 Division.  
15 The deponent is Lacey Keller.  
16 Counsel will be noted on the  
17 stenographic record.  
18 The court reporter is Annette  
19 Arlequin and will now swear in the  
20 witness.  
21 \* \* \*  
22 L A C E Y R. K E L L E R, called as a  
23 witness, having been duly sworn by a  
24 Notary Public, was examined and  
25 testified as follows:

Page 12

1  
2 THE WITNESS: I do.  
3 Lacey Rae Keller.  
4 EXAMINATION BY  
5 MS. LEVY:  
6 Q. Good morning, Ms. Keller. My  
7 name is Jenny Levy, and I'm an attorney  
8 here at Kirkland & Ellis. I represent the  
9 Allergan defendants in this case.  
10 Thank you for being here today.  
11 Apologies in advance for my scratchy voice  
12 and sniffles. I'm feeling very under the  
13 weather, so I will do my best to keep my  
14 germs away from you.  
15 Have you ever had your deposition  
16 before?  
17 A. Good morning, Jenny. Thanks for  
18 having me. And no.  
19 Q. This is the first deposition  
20 experience you've ever had?  
21 A. Correct.  
22 Q. In the course of your work either  
23 at the New York Attorney General's Office  
24 or previously with SEIU, did you sit in on  
25 any depositions or is this the first time

Page 13

1  
2 you've had this experience?  
3 A. This is the first time I've had  
4 this experience.  
5 Q. You've never been to a deposition  
6 before?  
7 A. That is correct.  
8 Q. Okay. Let me tell you, just so  
9 you're comfortable, how this is going to  
10 go.  
11 We have a court reporter to my  
12 right, your left, who is typing out every  
13 word that I'm saying and every word that  
14 you will say, in addition to our  
15 videographer.  
16 Because she is typing all of our  
17 words, it's important that instead of the  
18 way we would normally communicate, maybe  
19 nodding our your head or saying "uh-huh,"  
20 that you do your best to speak in words  
21 when you answer my question.  
22 Does that make sense?  
23 A. That makes sense.  
24 Q. Okay. Thanks.  
25 And if you don't understand the

Page 14

1  
 2 question I'm asking you, please absolutely  
 3 feel free to tell me that, and I will do my  
 4 very best to rephrase it. I don't want the  
 5 questions to be tricky. They're not  
 6 intended to confuse you. I would like to  
 7 make sure that you understand them before  
 8 you answer them.  
 9 Can we agree that if you don't,  
 10 you'll ask me to rephrase?  
 11 A. Thanks. I will.  
 12 Q. Is there any reason that you  
 13 can't give truthful, honest testimony  
 14 today?  
 15 A. No.  
 16 Q. Okay. I'm going to ask you  
 17 questions. The attorneys that came with  
 18 you today may object to questions that I  
 19 ask. Unless they instruct you not to  
 20 answer, I would ask that you please answer  
 21 the questions.  
 22 If they instruct you not to  
 23 answer, we'll probably quibble about that,  
 24 but you'll get to follow your counsel's  
 25 advice on that; otherwise, we can take

Page 15

1  
 2 breaks?  
 3 If you need a break at any time,  
 4 I would ask that you just answer any  
 5 pending question I have before we take a  
 6 break.  
 7 So if you need to use the  
 8 restroom or check your email or are hungry  
 9 or any of that, feel free to just tell me  
 10 and we can take a break when we get to an  
 11 appropriate stopping point.  
 12 MS. LEVY: Okay. I would like to  
 13 mark as Exhibit 1, the deposition  
 14 notice that was issued in this case.  
 15 (Keller Exhibit 1, Track 1  
 16 Defendants' Second Amended Notice of  
 17 Oral Videotaped Deposition of Lacey R.  
 18 Keller, marked for identification, as  
 19 of this date.)  
 20 MS. LEVY: Do you folks want  
 21 copies, physical copies of the  
 22 exhibits? If you do, just raise your  
 23 hand. I'm going to pass them down  
 24 through Catie. And share them among  
 25 yourselves.

Page 16

1  
 2 If there are any exhibits that  
 3 folks would like me to put on the ELMO,  
 4 please just say so.  
 5 BY MS. LEVY:  
 6 Q. Ms. Keller, have you seen this  
 7 deposition notice before?  
 8 A. No.  
 9 Q. This is the first time you've  
 10 taken a look at it?  
 11 A. Yes.  
 12 Q. Okay. If you don't mind, please  
 13 turn to the back page that says Exhibit A.  
 14 Exhibit A is a request for three  
 15 categories of documents.  
 16 Do you see that?  
 17 A. I do.  
 18 Q. Okay. Let's start with No. 1,  
 19 "All documents or other materials you  
 20 reviewed since the date of your report that  
 21 have not specifically been identified in  
 22 your report in preparation for your  
 23 expected testimony."  
 24 Do you see that?  
 25 A. I do.

Page 17

1  
 2 Q. Have you prepared a list of  
 3 documents that would respond to No. 1?  
 4 A. I believe I have.  
 5 Q. Okay. I'm going to mark what  
 6 is -- I'm going to hand you what we're  
 7 going to mark as Exhibit 2.  
 8 (Keller Exhibit 2, List of  
 9 documents that respond to request 1 in  
 10 Exhibit A on Exhibit 1, marked for  
 11 identification, as of this date.)  
 12 BY MS. LEVY:  
 13 Q. Do you see Exhibit 2?  
 14 A. I do.  
 15 Q. Take a look at that. Is  
 16 Exhibit 2 a list of documents that respond  
 17 to request 1 in Exhibit A on Exhibit 1?  
 18 A. It's my intention that it does.  
 19 Q. Okay. That's what I figured.  
 20 How did -- who prepared  
 21 Exhibit 2?  
 22 A. Exhibit 2, I'm sorry, yes. I  
 23 did.  
 24 Q. And how did you prepare  
 25 Exhibit 2? What did you do to come up with

<p style="text-align: right;">Page 18</p> <p>1 2 that list?</p> <p>3 A. Specifically to make the list or</p> <p>4 for the items?</p> <p>5 Q. To make the list.</p> <p>6 A. To make the list? To be honest,</p> <p>7 we wrote a Python script to go through all</p> <p>8 the documents that I used to rely on, and</p> <p>9 then I compiled the actual Excel</p> <p>10 spreadsheet or list that you guys received.</p> <p>11 Q. You used data science to make a</p> <p>12 list. I'm impressed.</p> <p>13 And so am I correct that</p> <p>14 Exhibit 2 reflects all the materials that</p> <p>15 were not cited in your report but that you</p> <p>16 have reviewed and relied on to form your</p> <p>17 opinions since your report? Is that</p> <p>18 correct?</p> <p>19 A. Yes. There may be some overlap.</p> <p>20 There might be some citations here that</p> <p>21 were in the original covered items, but I</p> <p>22 just didn't want to exclude anything, so to</p> <p>23 be thorough, I put them all here.</p> <p>24 Q. Got it.</p> <p>25 And other than the materials</p>	<p style="text-align: right;">Page 20</p> <p>1 2 through 35, marked for identification,</p> <p>3 as of this date.)</p> <p>4 MS. LEVY: Let's go off the</p> <p>5 record for just a minute.</p> <p>6 THE VIDEOGRAPHER: The time is</p> <p>7 9:18 a.m. We are now off the record.</p> <p>8 (Off the record.)</p> <p>9 THE VIDEOGRAPHER: The time is</p> <p>10 9:20 a.m. We are back on the record.</p> <p>11 BY MS. LEVY:</p> <p>12 Q. Ms. Keller, take a look at</p> <p>13 Exhibit 3 that we've put in front of you.</p> <p>14 A. I have it.</p> <p>15 Q. What is Exhibit 3?</p> <p>16 A. These are our invoices.</p> <p>17 Q. And is Exhibit 3 a comprehensive</p> <p>18 list of all invoices that Gryphon</p> <p>19 Strategies has submitted in this case?</p> <p>20 MS. CONROY: Objection.</p> <p>21 You can go ahead and answer.</p> <p>22 THE WITNESS: Okay.</p> <p>23 A. To the best of my knowledge, yes.</p> <p>24 Q. Okay.</p> <p>25 A. And it's Gryphon.</p>
<p style="text-align: right;">Page 19</p> <p>1 2 cited in your report and the materials</p> <p>3 listed in Exhibit 2 as additional reliance</p> <p>4 materials, are there any other materials</p> <p>5 that you relied on in forming your opinions</p> <p>6 in this case?</p> <p>7 A. No.</p> <p>8 Q. If we look back at Exhibit 1,</p> <p>9 Item No. 2 in Exhibit A in Exhibit 1 asked</p> <p>10 for an "itemization of the hours spent, the</p> <p>11 compensation paid or to be paid for your</p> <p>12 work in this matter and your staff's work</p> <p>13 in this matter, including all invoices you</p> <p>14 have submitted to counsel."</p> <p>15 Do you see that?</p> <p>16 A. Yes, I do.</p> <p>17 Q. Did you prepare and give to</p> <p>18 counsel a list of your invoices that</p> <p>19 reflect all of the work you've done in this</p> <p>20 case?</p> <p>21 A. Yes, I have.</p> <p>22 Q. Okay.</p> <p>23 (Keller Exhibit 3, Gryphon</p> <p>24 Strategies Invoice dated 5/30/19,</p> <p>25 Bates-stamped OPIOIDMDL_KELLER_000036</p>	<p style="text-align: right;">Page 21</p> <p>1 2 Q. Sorry. Thank you.</p> <p>3 A. Everyone says Gryphon so...</p> <p>4 Q. The dragon makes it look like it</p> <p>5 should be a more dramatic name. Gryphon.</p> <p>6 Okay. Thank you for correcting me.</p> <p>7 What is Gryphon Strategies?</p> <p>8 A. Gryphon Strategies is a private</p> <p>9 investigation consulting firm.</p> <p>10 Q. And you went to work at Gryphon</p> <p>11 Strategies in 2017?</p> <p>12 A. Yes.</p> <p>13 Q. From the New York Attorney</p> <p>14 General's Office?</p> <p>15 A. Correct.</p> <p>16 Q. You weren't the founder. It</p> <p>17 existed before you got there, correct?</p> <p>18 A. Correct.</p> <p>19 Q. How many individuals, roughly,</p> <p>20 work at Gryphon Strategies?</p> <p>21 A. When I started, it was probably</p> <p>22 around 50. My guess is that number is much</p> <p>23 larger now. Probably around 70.</p> <p>24 Q. Does Gryphon have, like, multiple</p> <p>25 places of business or is it all located in</p>



Page 22

1  
2 White Plains?  
3 A. There are multiple offices. So  
4 the headquarters is in White Plains. We  
5 have a satellite office in the city here.  
6 And I believe they're in process of opening  
7 a few offices around the rest of the world.  
8 Q. And where do you work?  
9 A. I work in New York City.  
10 Q. How many folks work with you in  
11 New York City?  
12 A. Around seven to nine, depending  
13 on our intern flux.  
14 Q. Okay. And how many individuals  
15 have worked with you on this case?  
16 A. Sorry, let me just do the math.  
17 Q. Sure.  
18 A. Around six.  
19 Q. Got it.  
20 Is there anybody above you or  
21 that you report to within Gryphon on this  
22 case or are you the boss?  
23 A. I'm the boss of our division,  
24 yes.  
25 Q. And the other individuals that

Page 23

1  
2 have worked on this matter are reporting to  
3 you or work for you; is that fair?  
4 A. Correct. They report directly to  
5 me.  
6 Q. Gotcha.  
7 Does Exhibit 3 and the work that  
8 is covered by the invoices in Exhibit 3  
9 cover all of the work that Gryphon  
10 Strategies has done on this matter?  
11 A. For data mining and analytics.  
12 Correct.  
13 Q. Is there other work besides data  
14 mining and analytics that Gryphon  
15 Strategies has done on this matter?  
16 MS. CONROY: Objection.  
17 You can answer.  
18 A. Yes.  
19 Q. And what category of other work?  
20 MS. CONROY: Just before you  
21 answer, I don't want -- this is an area  
22 where there is some attorney work  
23 product. If you inquire a little bit  
24 more, it has nothing to do -- Lacey is  
25 not involved in that.

Page 24

1  
2 MS. LEVY: Okay.  
3 BY MS. LEVY:  
4 Q. For the questions that I ask you  
5 about this other work, I do not want you to  
6 answer any specifics of that. We are very  
7 worried about attorney-client privilege, so  
8 we don't want, we don't want anything  
9 confidential that attorneys have said to  
10 you or you have said to attorneys or that  
11 you know of that attorneys have said to  
12 Gryphon or Gryphon has said to be revealed  
13 in my questions.  
14 But, generally, is it true to say  
15 in addition to data mining and analytics,  
16 Gryphon Strategies has performed other  
17 services related to the opioid matter?  
18 A. That is correct to say.  
19 Q. And have you been involved in any  
20 work other than data mining and analytics  
21 for this matter?  
22 A. No. I have only done data mining  
23 and analytics for this matter.  
24 Q. Have you participated in meetings  
25 related to the other work that Gryphon

Page 25

1  
2 Strategies is doing or has done for the  
3 opioid matter?  
4 A. No.  
5 Q. Has there been any overlap  
6 between your work and the other work that  
7 Gryphon Strategies is doing?  
8 A. How would you define overlap?  
9 Q. So is there a wall between you  
10 and your team that Gryphon has put in place  
11 and others at Gryphon who are doing  
12 different work?  
13 A. No. We share an office. So like  
14 we're all in the same work space. Even  
15 physically, there is not a wall. But even  
16 metaphorically, no.  
17 Q. I guess I should be more clear  
18 about that.  
19 Has Gryphon Strategies put in  
20 place what lawyers would call a Chinese  
21 wall?  
22 Are you familiar with the term  
23 "Chinese wall"?  
24 A. Yeah, sort of.  
25 Q. Has Gryphon Strategies put in

Page 26

1  
2 place a procedure by which your team is  
3 walled off from other teams at Gryphon  
4 doing work on the opioid litigation?  
5 A. Not explicitly, no.  
6 Q. Have you had communications, you  
7 personally, with others at Gryphon who are  
8 doing other types of work other than data  
9 mining and analytics about the opioid  
10 litigation or the work that's being done in  
11 the opioid litigation?  
12 A. Yes.  
13 Q. Who, just names of individuals,  
14 who specifically have you communicated with  
15 at Gryphon that's not on your team  
16 regarding your work in this case?  
17 A. So in not great detail, my boss,  
18 Jay Dawdy. He is the president of the  
19 firm. Mostly just to update him on what  
20 we're doing with all of our time. And Eric  
21 Nawrocki. I can provide a spelling on that  
22 one if that's difficult.  
23 Q. Who is Eric Nawrocki?  
24 A. Eric Nawrocki is another managing  
25 director.

Page 27

1  
2 Q. And what is your title at Gryphon  
3 Strategies? You're a managing director as  
4 well, right?  
5 A. Correct.  
6 Q. How many managing directors are  
7 there?  
8 A. I think there's around four or  
9 five. I'd have to check the website to be  
10 certain.  
11 Q. Have you done any work relating  
12 in any way to the opioid litigation or your  
13 retention in this case with individuals  
14 outside of the New York City office?  
15 MS. CONROY: You mean Gryphon?  
16 MS. LEVY: Yes.  
17 A. So Jay Dawdy is primarily based  
18 in the White Plains office. Eric is based  
19 primarily in the New York City office, if  
20 that helps answer the question.  
21 Q. And how has the work that you  
22 have done on data and analytics overlapped  
23 with the work that -- with what you've  
24 communicated with others in the firm? What  
25 is the overlap?

Page 28

1  
2 A. There's very little. Their work  
3 is primarily concerned with people and  
4 we're more with the numbers, to the extent  
5 that the people have numbers. For example,  
6 like numbers of prescriptions in the IQVIA  
7 data, that would be one place where you  
8 could imagine some overlap.  
9 Q. Have you shared data sets with  
10 other teams in Gryphon working on opioid  
11 matters?  
12 A. Data sets?  
13 Q. Yes.  
14 A. No.  
15 Q. Have you shared ARCOS data with  
16 other teams in Gryphon?  
17 A. No.  
18 Q. Have you shared chargeback data  
19 with other teams in Gryphon?  
20 A. No.  
21 Q. Have you shared any of the data  
22 provided to you by the attorneys in this  
23 case with others at Gryphon?  
24 A. Not in its raw form, no.  
25 Q. Have you shared in any form?

Page 29

1  
2 A. I have provided some aggregated  
3 statistics.  
4 Q. What aggregated statistics have  
5 you provided to others in your firm?  
6 A. One -- an example would be like  
7 the prescriptions of a physician over time.  
8 Just like in the report, we talk about  
9 Adolf Harper, so the number of  
10 prescriptions that Adolf Harper wrote over  
11 time.  
12 Q. I think I understand.  
13 So aggregated statistics relating  
14 to individuals, is that the category of  
15 data that you shared?  
16 A. Yes, individuals --  
17 Q. Individual prescribers?  
18 A. Yeah. Maybe a pharmacy.  
19 Q. Is there any other category of  
20 data that you can think of that you shared  
21 with others that are not on your data and  
22 analytics team?  
23 A. Not at this time, no.  
24 Q. Okay.  
25 MS. LEVY: I think we're up to



Page 30

1  
2 Exhibit 4.  
3 (Keller Exhibit 4, Resume of  
4 Lacey R. Keller, not Bates-stamped,  
5 marked for identification, as of this  
6 date.)  
7 BY MS. LEVY:  
8 Q. What is Exhibit 4?  
9 A. That's a question for me? Sorry.  
10 Q. Yes.  
11 A. Okay.  
12 Q. It should be an easy one.  
13 A. Boy, I hope so. That's my CV or  
14 my resumé.  
15 Q. Okay. And going back to  
16 Exhibit 1, Exhibit 1, the last page of  
17 Exhibit 1 on Exhibit A, No. 3 asked for a  
18 "copy of the most current and accurate  
19 curriculum vitae, CV, as of the date of  
20 your deposition."  
21 Is the document that we've  
22 labeled Exhibit 4 a copy of your most  
23 recent CV?  
24 A. Yes.  
25 Q. And when was this created?

Page 31

1  
2 A. Just before we filed the report.  
3 Q. And you haven't added anything to  
4 your resumé since then?  
5 A. No.  
6 Q. Taking a look at Exhibit 4, and  
7 starting at the top left, you are currently  
8 a managing director at Gryphon where you've  
9 worked from November 2017 to the present,  
10 about a year-and-a-half, correct?  
11 A. That is correct.  
12 Q. Did you start at Gryphon as a  
13 managing director or did you start with a  
14 different title?  
15 A. I started as a managing director.  
16 Q. How did you get the job at  
17 Gryphon? Who hired you? How did that come  
18 about?  
19 A. Yeah, so at the time, I was  
20 working at the Attorney General's Office  
21 and Jay Dawdy had approached me about  
22 coming to the firm to start their data  
23 mining and analytics practice. He thought  
24 the work that we were doing at the AG's  
25 office was super innovative and wanted to

Page 32

1  
2 see if I'd be interested in doing that with  
3 him.  
4 Q. Did you know Jay Dawdy before  
5 that?  
6 A. No, I didn't.  
7 Q. How do you spell Dawdy?  
8 A. D-a-w-d-y.  
9 Q. Dawdy. I'm from the south. We  
10 say "Dowdy."  
11 A. Yes.  
12 Q. And so how did he know about you?  
13 A. Boy, I have to remember. I  
14 believe we had an intern in common. And so  
15 I had an intern and then that intern went  
16 to be his intern or staff. And the intern  
17 had said, boy, there's this lady, you need  
18 to speak with her. And so I think that's  
19 how we got to know each other.  
20 Q. Have your job response -- what,  
21 in general, are your job responsibilities  
22 as a managing director at Gryphon?  
23 A. So generally that means running  
24 the data team and building out that  
25 practice.

Page 33

1  
2 Q. Do you have clients right now  
3 other than clients related to this  
4 litigation? Not tell me what they are,  
5 just a "yes" or "no" question.  
6 A. Yes.  
7 Q. What percentage of your work is  
8 related to this litigation as opposed to  
9 other clients not related to this  
10 litigation?  
11 A. I don't have an exact number, but  
12 the vast majority is this litigation.  
13 Q. Would you say like 75, 80  
14 percentish? I know you're estimating.  
15 A. Yeah, the data part of me doesn't  
16 want to do that, but, yeah --  
17 Q. Okay.  
18 A. -- or more.  
19 Q. And not naming other clients,  
20 particularly if they're confidential, but  
21 other than this litigation, what types of  
22 other clients and work are you doing in  
23 addition to this?  
24 A. So we have governmental clients.  
25 Q. And your governmental clients, is

Page 34

1  
2 that related to pharmaceuticals or other  
3 issues?  
4 A. Completely separate issues.  
5 Q. Okay. Do you have any other  
6 clients that relate in any way to  
7 pharmaceuticals or opioids?  
8 A. No.  
9 Q. Okay. Now turning to your work  
10 at the New York Attorney General's Office,  
11 how did you get that job?  
12 A. So I was at the union at the time  
13 and was looking for the next step. A  
14 friend of mine had said that they were  
15 looking for a researcher at the AG's  
16 office, and I thought that would be at  
17 first a pretty boring job and that I would  
18 just be reading documents all day in a  
19 taupe office. But after meeting with them,  
20 I realized it would be a pretty exciting  
21 job because they wanted to build out a data  
22 mining practice there and make leads out of  
23 big data.  
24 Q. I'm smiling because I actually  
25 did some research on you and I watched your

Page 35

1  
2 YouTube video on this, and I've seen how  
3 excitedly you describe particularly how you  
4 thought it was going to be boring.  
5 Is the work that you did -- you  
6 were at the New York Attorney's General  
7 Office from October 2013 through  
8 November 2017, just over four years,  
9 correct?  
10 A. That is correct.  
11 Q. Is the work that you did or the  
12 categories or types of matters you worked  
13 on all summarized on Exhibit 4 in the  
14 section under New York State Attorney  
15 General's Office?  
16 A. I am sure there's much more that  
17 I worked on or supervised.  
18 Q. Okay. Fair enough.  
19 From your, from the YouTube  
20 video -- you know what YouTube video I'm  
21 referring to? It was a Washburn alumni  
22 thing?  
23 A. Yeah.  
24 Q. From the YouTube video, I -- you  
25 made some comment about why you thought it

Page 36

1  
2 wasn't boring, which is you realized that  
3 you could take data and learn how to chase  
4 leads.  
5 Do you remember saying that?  
6 A. Yes.  
7 Q. Is that a good description of  
8 what you were doing at the U.S. Attorney  
9 General's Office?  
10 A. It's New York Attorney General's  
11 Office and -- for the record.  
12 Yeah.  
13 Q. I'm sorry. I thought -- I didn't  
14 mean to say U.S. Attorney General, I meant  
15 to say New York.  
16 So on your CV, you list several  
17 areas in which you used data and data  
18 mining techniques in order to generate  
19 leads on cases. And one is in the gun and  
20 firearms space.  
21 And a second one is using data  
22 analytics to figure out leads on, I guess,  
23 vendors with respect to Internet speed?  
24 A. Oh, yes.  
25 Q. I also see here, I'm combining

Page 37

1  
2 your CV and your report, but experience  
3 that you have with using data to generate  
4 leads in the Airbnb rental space.  
5 Is that also part of your work?  
6 A. Those all three are part of my  
7 work, yes.  
8 Q. And you also used data analytics  
9 to do modeling of landlord complaints?  
10 Specifically, generate leads with, like,  
11 landlords who are out of compliance with  
12 tax laws?  
13 A. Oh, yes, that would be the  
14 421(a).  
15 Q. I see that you, in your  
16 experience, have used data to generate  
17 leads on fake trades in foreign currency?  
18 A. Yes, I supervised that work, but,  
19 yes.  
20 Q. In your, in the combination of  
21 your report and other information I could  
22 find about you and your CV, I see one area  
23 where you have, where your work in data  
24 analytics has overlapped with the  
25 pharmaceutical industry, and that is when

<p style="text-align: right;">Page 38</p> <p>1</p> <p>2 you were modeling data that could help with</p> <p>3 the deployment of Naloxone?</p> <p>4 A. Sure.</p> <p>5 Q. Am I correct about that?</p> <p>6 A. Yes, you're correct about that.</p> <p>7 Q. So up until your work on this</p> <p>8 case, have you done any other work with</p> <p>9 data and analytics related to the</p> <p>10 pharmaceutical industry?</p> <p>11 A. Yes.</p> <p>12 Q. What was that?</p> <p>13 A. At a high level, it would have</p> <p>14 been pulling publicly available data on</p> <p>15 opioids, hospitalizations, opioid</p> <p>16 prescribing, so that would be like the</p> <p>17 public ARCOS reports. And, I'm sorry,</p> <p>18 those aren't prescribed, those are</p> <p>19 shipments. So the public ARCOS reports and</p> <p>20 New York State hospitalization data, is one</p> <p>21 example.</p> <p>22 Q. Okay. So I want to make sure my</p> <p>23 record is clear.</p> <p>24 Prior to your work on this case</p> <p>25 that you're doing through Gryphon, you had</p>	<p style="text-align: right;">Page 40</p> <p>1</p> <p>2 with finding something that was of</p> <p>3 importance to do in the area.</p> <p>4 And so I wouldn't say that it was</p> <p>5 really data driven. I didn't deploy based</p> <p>6 off of, you know, this is where the most</p> <p>7 overdoses were occurring, because at that</p> <p>8 time, that data set really didn't exist in</p> <p>9 a robust fashion.</p> <p>10 So it was just a "raise your</p> <p>11 hand" program, if you will. So if a police</p> <p>12 department came to us and said, look, we</p> <p>13 could use some money to buy this Narcan,</p> <p>14 then we would give them that, that funds.</p> <p>15 Q. And so you analyzed a segment of</p> <p>16 ARCOS data in your in your work in figuring</p> <p>17 out how to best deploy Naloxone.</p> <p>18 Is that true or false?</p> <p>19 A. That's not -- that would be</p> <p>20 false.</p> <p>21 Q. Okay. Did you not -- you did not</p> <p>22 use ARCOS data?</p> <p>23 A. No.</p> <p>24 Q. Okay.</p> <p>25 A. Not for the -- I used ARCOS data</p>
<p style="text-align: right;">Page 39</p> <p>1</p> <p>2 prior experience with a project at the New</p> <p>3 York Attorney General's Office that related</p> <p>4 to, I'm going to say, Naloxone deployment.</p> <p>5 Is that a fair way to categorize</p> <p>6 it?</p> <p>7 A. So the Naloxone deployment, yes,</p> <p>8 that was the Community Overdose and</p> <p>9 Prevention program is what we called it,</p> <p>10 the COP program. And so that was the</p> <p>11 deployment of Naloxone around the state and</p> <p>12 to police officers. So we equipped every</p> <p>13 police officer with the life-saving Narcan.</p> <p>14 And so I managed that program.</p> <p>15 Q. And the way you did that,</p> <p>16 describe what data you looked at generally.</p> <p>17 We don't need to educate ourselves fully</p> <p>18 about the project, but, generally, what was</p> <p>19 the data, what did you look at, and what</p> <p>20 was your methodology for working on the COP</p> <p>21 project?</p> <p>22 A. So, I remember it was the fall</p> <p>23 that Philip Seymour Hoffman died that that</p> <p>24 was when the office took an interest in</p> <p>25 opioids generally. And so I was tasked</p>	<p style="text-align: right;">Page 41</p> <p>1</p> <p>2 for other things, but not for that, no.</p> <p>3 Q. Okay. What in the past have you</p> <p>4 used ARCOS data for?</p> <p>5 A. So I've only used the public</p> <p>6 ARCOS data in the past, and that was mostly</p> <p>7 to get a general sense of where the</p> <p>8 shipments were going into New York.</p> <p>9 Q. And was that in conjunction with</p> <p>10 the Naloxone project or was that for</p> <p>11 something else?</p> <p>12 A. I can't be -- I can't really</p> <p>13 recall the timing, but it was either around</p> <p>14 that time or shortly -- or probably</p> <p>15 subsequent. I'm trying to think of where I</p> <p>16 was, but, yeah.</p> <p>17 Q. And what did you do with the</p> <p>18 results of your analysis? What was the</p> <p>19 results and what did you do with it?</p> <p>20 A. I wrote a pretty high level memo</p> <p>21 about, like, the state of opioids in New</p> <p>22 York as much as I could from public data.</p> <p>23 Q. And what did you -- what did it</p> <p>24 say?</p> <p>25 A. I mean, I wrote it years ago, so</p>

Page 42

1  
 2 I can't remember exactly. But at a high  
 3 level, it would have the number of  
 4 shipments into the state. I think we were  
 5 able to get it by ZIP three. I think we  
 6 ended up mapping it to counties because  
 7 people have counties here, not ZIP codes.  
 8 The number of deaths over time,  
 9 the number of hospitalizations over time,  
 10 specifically opioid-related deaths and  
 11 opioid-related hospitalizations.  
 12 My guess is it would have also  
 13 included some open payments data as well  
 14 from Center for Medicaid Studies. And it  
 15 would have just summarized all of those at  
 16 a fairly high level.  
 17 Q. And do you know what it would  
 18 used for? Who it was submitted to?  
 19 A. I'm not sure exactly who it was  
 20 submitted to.  
 21 Q. Or what happened with it?  
 22 A. I don't know exactly what  
 23 happened with it. It's hard to tell.  
 24 Q. And what year were you conducting  
 25 this analysis and drafting this memo?

Page 43

1  
 2 A. I'm sorry, I have to think a  
 3 little bit. I want to say around  
 4 2015-2016.  
 5 Things get picked up and put down  
 6 quite a bit in government, especially as  
 7 more pressing matters come to light so...  
 8 Q. On your -- so other than the work  
 9 you've just described in analyzing -- what  
 10 do you call that project that you just  
 11 talked about? It's different from the  
 12 Naloxone COP project. What do you call  
 13 that segment of work?  
 14 A. So that segment of work is a  
 15 pretty typical request of my team at the  
 16 AG's offices. Like, we were the -- we were  
 17 a data-driven research team, but  
 18 fundamentally we are a research team. So  
 19 give us the facts about whatever. So, you  
 20 know, you could call it briefings or  
 21 whatnot, but they were, you know, fact,  
 22 factual-driven documents so...  
 23 Q. Opioid research?  
 24 A. Yes. It was one example, but  
 25 I've written them on, you know, payroll

Page 44

1  
 2 cards and other unrelated things as well.  
 3 That's pretty much what we did at that  
 4 office, in addition to data support.  
 5 Q. So if I want to hone in on your  
 6 opioid and pharmaceutical experience, I --  
 7 you've told me about the Naloxone  
 8 deployment COP project. You've told me  
 9 about opioid research and data that you did  
 10 with the New York Attorney General's  
 11 Office.  
 12 Aside from those two things, do  
 13 you have any other experience looking at  
 14 pharmaceutical data prior to this case?  
 15 A. Not prior to this case, that I  
 16 recall.  
 17 Q. Since you have begun your work on  
 18 this case, do you have any additional work  
 19 in the pharmaceutical space? Without  
 20 revealing any confidences.  
 21 A. Not that I am currently  
 22 contracted for or being paid to do work on.  
 23 Q. Like potential leads or potential  
 24 clients you're thinking about, but nothing  
 25 that you've actually done yet; is that

Page 45

1  
 2 correct?  
 3 A. Correct, nothing that I've  
 4 submitted an invoice to or could bill hours  
 5 to.  
 6 Q. Is the education in the top  
 7 right-hand corner that is reflected in  
 8 Exhibit 4, does this continue to be  
 9 accurate today?  
 10 A. Yes.  
 11 Q. Do you have a Master's of Arts  
 12 from the New School in 2010; is that  
 13 correct?  
 14 A. That is correct.  
 15 Q. Bachelor of Business  
 16 Administration in Economics from Washburn  
 17 University, 2008?  
 18 A. That is correct.  
 19 Q. And a certificate in data  
 20 science, it says General Assembly, 2015.  
 21 What does that mean?  
 22 A. General Assembly, I'm not sure if  
 23 it's still around, was like an evening boot  
 24 camp for-profit -- I think it's a  
 25 for-profit institution to learn data

<p style="text-align: right;">Page 46</p> <p>1 science.</p> <p>2</p> <p>3 So I took a semester-long evening</p> <p>4 class while I was at the AG's office to</p> <p>5 kind of brush up on my skills because I</p> <p>6 wanted to know a little bit more about the</p> <p>7 field and where we were headed.</p> <p>8 Q. When you describe your profession</p> <p>9 to people at the dinner table, are you a</p> <p>10 data scientist?</p> <p>11 A. So that term gets thrown around a</p> <p>12 lot. I would say -- pure data scientist,</p> <p>13 would say no. I use that title because</p> <p>14 it's a known quantity. I would not call</p> <p>15 myself a data scientist. I'm a manager of</p> <p>16 data scientists, is a much better</p> <p>17 reflection of my --</p> <p>18 Q. Okay. And what is the difference</p> <p>19 between those two things in your mind?</p> <p>20 I've never heard the distinction. I'm</p> <p>21 asking very genuinely.</p> <p>22 A. So a data scientist, in my</p> <p>23 opinion, are going to be fluent in several</p> <p>24 different languages. And not like French</p> <p>25 or Arabic like as you and I would think of</p>	<p style="text-align: right;">Page 48</p> <p>1</p> <p>2 law, right?</p> <p>3 A. I am not an expert in the law.</p> <p>4 Q. And you don't intend to offer any</p> <p>5 legal opinions in this case?</p> <p>6 A. I do not.</p> <p>7 Q. You have not ever worked in drug</p> <p>8 enforcement, have you?</p> <p>9 A. No, I have never worked in drug</p> <p>10 enforcement.</p> <p>11 Q. You are not an expert on the</p> <p>12 Controlled Substances Act, are you?</p> <p>13 A. That is correct, I am not an</p> <p>14 expert in the Controlled Substance Act.</p> <p>15 Q. You have not ever worked with the</p> <p>16 DEA, have you?</p> <p>17 A. I have not. I have not worked</p> <p>18 with the DEA.</p> <p>19 Q. And you are not an expert in DEA</p> <p>20 requirements and regulations, correct?</p> <p>21 A. That is correct.</p> <p>22 Q. You are not an expert or don't</p> <p>23 intend to offer yourself as an expert in</p> <p>24 what the DEA regulations actually mean,</p> <p>25 correct?</p>
<p style="text-align: right;">Page 47</p> <p>1</p> <p>2 them, but more like SQL, Python, whatever</p> <p>3 programming languages you fancy, and be</p> <p>4 able to work in multiple platforms easily.</p> <p>5 I have those skills as well, but</p> <p>6 I don't use them every single day like they</p> <p>7 do. And so I'm much more in the managing</p> <p>8 and prioritizing of the workflow,</p> <p>9 fact-checking, confirming that the process</p> <p>10 is right, the assumptions are correct.</p> <p>11 Q. Got it.</p> <p>12 And so if I ask you, what is your</p> <p>13 expertise, how do you describe it to me? I</p> <p>14 am an expert in?</p> <p>15 A. I'm an expert in seeing the big</p> <p>16 picture, the data sources that are</p> <p>17 available to me, combining them, whether</p> <p>18 they be public, private, confidential, and</p> <p>19 using them for results.</p> <p>20 Q. I think I know the answer to</p> <p>21 these, but I have to ask them anyway.</p> <p>22 You don't have a law degree,</p> <p>23 correct?</p> <p>24 A. That is correct.</p> <p>25 Q. And you are not an expert in the</p>	<p style="text-align: right;">Page 49</p> <p>1</p> <p>2 A. That is correct.</p> <p>3 Q. You do not intend to offer</p> <p>4 yourself as an expert in what DEA</p> <p>5 registrants should or are supposed to do in</p> <p>6 accordance with those guidance and</p> <p>7 regulations, correct?</p> <p>8 A. That is correct.</p> <p>9 Q. And from a big picture level, if</p> <p>10 I understand your report correctly, what</p> <p>11 you have done is offer -- is do analyses</p> <p>12 offering 16 different metrics and</p> <p>13 illustrate what the results of those</p> <p>14 metrics would show at a high level.</p> <p>15 Do you agree with me that that's</p> <p>16 what your report does?</p> <p>17 A. Yes. I didn't actually count how</p> <p>18 many metrics, so I'm taking your word that</p> <p>19 there are 16.</p> <p>20 Q. I will represent to you that I</p> <p>21 count 16. But what I'm trying to parse</p> <p>22 out, I don't mean to be mysterious, is I</p> <p>23 want to make sure that I understand the</p> <p>24 expertise you do intend to offer and the</p> <p>25 expertise you don't intend to offer.</p>



Page 50

1  
2 So as I understand your opinions,  
3 they are opinions from a data science point  
4 of view that say if you ran these metrics,  
5 here's what the results would look like.  
6 Is that a fair assessment at a  
7 very, very high level?  
8 MS. CONROY: Objection.  
9 You can answer.  
10 A. I would say that's a fair  
11 assessment. I was asked to apply the  
12 compliance metrics to the labeler's data,  
13 including chargebacks and IMS, IQ, yeah.  
14 Q. And you don't intend to offer any  
15 opinions about which one of those metrics  
16 is the right one, do you?  
17 A. That is correct. I don't endorse  
18 any of the metrics or not endorse.  
19 Agnostic would be the correct term, yeah.  
20 Q. Okay. And you're not going to  
21 offer any opinions that a particular  
22 registrant should have or is required to  
23 employ which ones of the metrics? That is  
24 not what you were retained to do, correct?  
25 A. That is correct.

Page 51

1  
2 Q. And that is beyond your expertise  
3 to do.  
4 Do you agree with that?  
5 A. That is correct.  
6 Q. And I think, if I'm reading your  
7 report correctly, you don't take any  
8 opinion as to what the DEA or the  
9 Controlled Substances Act means when it  
10 talks about suspicious orders.  
11 You are not taking a position as  
12 to what specifically the DEA means, right?  
13 A. Yes, I believe that's right.  
14 Q. And I think it can make our day  
15 easier if I understand the scope of this.  
16 What you have done is you've used  
17 a number of different metrics to show that  
18 if a particular defendant had looked at the  
19 data this way, this is what that defendant  
20 would have seen.  
21 Is that fair?  
22 A. Yes.  
23 Q. And when you use the term  
24 "suspicious," which you do quite a number  
25 of times in your report, what you mean by

Page 52

1  
2 that is the result of your own metrics,  
3 right?  
4 A. Yes, you can characterize it that  
5 way.  
6 Q. You don't mean to use  
7 "suspicious" as a technical term meaning  
8 suspicious under the Controlled Substances  
9 Act, right?  
10 MR. LEDLIE: Object to the form.  
11 You can answer.  
12 A. Yes, when I say "suspicious," I  
13 mean that they have either triggered one of  
14 the metrics, which are -- I'll leave it at  
15 that.  
16 Q. Okay. And you haven't, you  
17 haven't gone -- have you ever met with  
18 anyone from DEA about this case and your  
19 report?  
20 A. I have not met with anyone about  
21 this case or my report from the DEA.  
22 Q. Okay. Why do you hesitate?  
23 A. I have spoken to DEA officials  
24 about the ARCOS data and how to process it,  
25 but clarifying questions of what does an S

Page 53

1  
2 mean and what does this correction number  
3 mean like...  
4 Q. Okay. When you have spoken to  
5 the DEA, it has been entirely in the  
6 context of the data itself, correct?  
7 A. Absolutely.  
8 Q. You've never asked anyone from  
9 DEA, "Do these various metrics make sense  
10 to you"? You've never asked that question?  
11 A. Never.  
12 Q. And you've never asked anybody  
13 from DEA, "Are these metrics in line with  
14 what DEA expects or requires"? That's  
15 nothing you've ever asked the DEA, correct?  
16 A. That is correct.  
17 Q. And that wasn't -- the point of  
18 your report is not to say what the DEA  
19 requires, but rather to say what the data  
20 had available for people to look at.  
21 Is that a proper simplification?  
22 MS. CONROY: Objection.  
23 You can answer.  
24 A. I would say, yes, it was what  
25 data was available to apply the -- what



Page 54

1  
2 data was available to apply the compliance  
3 metrics and what those metrics would have  
4 revealed.  
5 Q. And, again, I think you've  
6 answered this, but I want to be sure.  
7 You do not offer the opinion that  
8 any defendant had an obligation to apply  
9 any of the particular compliance metrics,  
10 right?  
11 A. That is correct.  
12 Q. And it is also beyond your  
13 expertise to opine on what would have  
14 happened in the real world if someone had  
15 applied the metrics? That is beyond what  
16 you are an expert in, correct?  
17 MS. CONROY: Objection.  
18 You can answer.  
19 A. Yes. There is a section in the  
20 report, the small labeler impact section,  
21 that, depending on how this question is  
22 worded, might come in conflict with that,  
23 but that's not the intention.  
24 Q. We'll get to that.  
25 But just generally, in the small

Page 55

1  
2 labeler impact, in your own words, you  
3 phrase it as a hypothetical, right?  
4 A. Correct.  
5 Q. You aren't suggesting -- the  
6 defendant that's subject to the small  
7 labeler impact is Janssen, correct?  
8 A. Yes, I believe so.  
9 Q. And what you do in that section  
10 is you model, hypothetically, if Janssen  
11 had looked at the data this way, then  
12 hypothetically, orders could have been  
13 stopped, right?  
14 A. That is correct.  
15 Q. But you do not go further in this  
16 report to opine that Janssen had an  
17 obligation to do that or should have done  
18 that or that the DEA expected Janssen to do  
19 that.  
20 That's beyond your expertise,  
21 right?  
22 A. That is beyond, yes.  
23 Q. Okay. And, also, you don't know  
24 or you don't have the expertise to know --  
25 you don't consider yourself an expert in

Page 56

1  
2 DEA reporting requirements, do you?  
3 A. No.  
4 Q. And you don't know what triggers  
5 a reporting requirement for a manufacturer?  
6 A. No.  
7 Q. You don't know what triggers a  
8 reporting requirement for a distributor, do  
9 you?  
10 A. No.  
11 Q. And you don't know what triggers  
12 reporting requirements for pharmacies?  
13 A. No.  
14 Q. It is beyond the scope of your  
15 expertise to opine on what triggers a  
16 reporting responsibility specifically?  
17 That's beyond what you have been asked to  
18 do here, correct?  
19 A. Correct.  
20 Q. And also just to make sure we  
21 narrow in on what your opinions are, you  
22 are not an expert in what DEA does with  
23 suspicious reports? That is beyond your  
24 expertise as well, right?  
25 A. That is correct.

Page 57

1  
2 Q. And I think there are places in  
3 your report where you talk about orders  
4 that could have been stopped. And I just  
5 want to make sure that I understand the  
6 parameters of what you intend to say about  
7 that.  
8 When you talk about orders that  
9 could have been stopped, you mean from a  
10 data perspective hypothetically, correct?  
11 A. Yes. I mean that the compliance  
12 metrics showed that order or that triggered  
13 that order and so, yes, it could have been  
14 stopped.  
15 Q. So someone, somewhere could have  
16 stopped those orders?  
17 A. Yes, they could have seen it or  
18 stopped it.  
19 Q. But beyond what the data shows,  
20 do you have any opinions whatsoever on how  
21 that would work in the real world?  
22 MS. CONROY: Objection.  
23 You can answer.  
24 A. No, I have no opinions on the  
25 real world.

Page 58

1  
2 Q. So going back to what we were  
3 talking about, Section 9, in the small  
4 manufacturer impact -- I think I've gotten  
5 it wrong. It's called...  
6 (Document review.)  
7 Q. Small labeler impact.  
8 You use the term "labeler" and  
9 "manufacturer" interchangeably, correct?  
10 A. I do.  
11 Q. Actually, you just use the term  
12 "labeler"?  
13 A. I think I use the term "labeler."  
14 I think at the beginning of the report, in  
15 the event that we do say "manufacturer," I  
16 always mean labeler because I...  
17 Q. Why do you do that, just out of  
18 curiosity? Most of the time I hear people  
19 talk about manufacturers. Why do you make  
20 that distinction?  
21 A. So as I understand it from when  
22 we process the data from the FDA, they call  
23 it the labeler. So when they say that the  
24 NDC was labeled by that entity, that was  
25 the -- I understand that to be like the

Page 59

1  
2 last person that put that, if you will, a  
3 box together.  
4 So I don't know how often that  
5 box was created by somebody else and  
6 labeled by someone else. They might always  
7 be the same. But to be most correct, I  
8 wanted to use the DEA's and the FDA's  
9 terminology. I'm not sure which one, where  
10 that term came from, but I saw that as part  
11 of the data set.  
12 Q. And so going back to the small  
13 labeler impact, when you talk about orders  
14 that could have been stopped, you did not  
15 analyze how that would have happened, who  
16 would have stopped the orders, who had a  
17 duty to stop the orders, what would have  
18 had to happen to stop the orders? You  
19 didn't do any of that work, did you?  
20 A. Correct.  
21 Q. And you certainly don't intend to  
22 opine that Janssen, in particular, should  
23 have stopped those transactions. That is  
24 beyond what you're saying. You're simply  
25 saying it could have happened, correct?

Page 60

1  
2 A. That is correct.  
3 Q. And really, as you sit here, you  
4 don't even know how Janssen or any other  
5 registrant would actually stop those orders  
6 in practice in the real world? That is not  
7 something that you have ever studied or  
8 know if it would even be possible, right?  
9 A. That's correct.  
10 Q. Okay. So let's go to the  
11 summary. Let me mark your report as  
12 Exhibit 5.  
13 (Keller Exhibit 5, Expert  
14 Analysis of Lacey R. Keller, not  
15 Bates-stamped, marked for  
16 identification, as of this date.)  
17 BY MS. LEVY:  
18 Q. Do you recognize what we've  
19 handed you as Exhibit 5?  
20 A. I do.  
21 Q. What is that?  
22 A. That is my report.  
23 Q. How did this document spring  
24 forth into the world? What -- who typed  
25 it? Whose computer was it on? How did it

Page 61

1  
2 get created?  
3 A. So it was a collective effort by  
4 my team. So we have folks working on some  
5 of the coding, some of the data loading,  
6 some of the writing. It sits on my  
7 computer, their computers. But all of it  
8 is in my team.  
9 Q. And you said there were roughly  
10 six people working under you on your team  
11 to create Exhibit 5?  
12 A. Yes.  
13 Q. Nobody working above you to  
14 create Exhibit 5?  
15 A. Correct.  
16 Q. And you communicated with the  
17 lawyers in this case to prepare Exhibit 5,  
18 correct?  
19 A. Correct.  
20 Q. And what lawyers specifically did  
21 you communicate with in your work in this  
22 case?  
23 A. I'd have to think, but primarily  
24 Linda Singer.  
25 Q. Can you think of any other

Page 62

1  
2 attorneys that you worked with other than  
3 Linda Singer?  
4 A. Jayne Conroy.  
5 Q. Anybody else? Any man attorneys  
6 or just -- did you have an all-women team?  
7 A. We're a strong team.  
8 Not that I can think of at this  
9 time.  
10 Q. And who typed the report?  
11 A. The report was primarily typed by  
12 one of my staffers and then myself as well.  
13 Q. Just very generally, like what  
14 was the process in writing it? Who did  
15 what in the process?  
16 A. Sure.  
17 So there's a pipeline. So we --  
18 you know, someone is usually in charge of  
19 loading the data, so bringing it in.  
20 Another person is in charge of the metrics  
21 and applying them. Another person is in  
22 charge of pulling charts, tables and  
23 graphs. And another person is in charge of  
24 making everything look pretty, write the  
25 words. And then it goes and flows up to

Page 63

1  
2 me.  
3 And then to the extent that I  
4 interject myself, either willingly or  
5 unwillingly from my staff, along each  
6 different places is how that usually looks.  
7 Q. And then did you ever -- strike  
8 that.  
9 For the 16 different analyses or  
10 the 16 different metrics, those metrics,  
11 you were asked to run by the attorneys in  
12 the case? They were not metrics that you  
13 yourself thought of, correct?  
14 A. I would say that is correct. We  
15 didn't create a metric to the extent that  
16 multiple distributor was kind of like --  
17 there was no, "here's how to apply a  
18 multiple distributor metric." You are just  
19 looking for whether or not they exist or  
20 not. Everything else was either created by  
21 another entity or found by us, if that  
22 makes sense.  
23 Q. So I guess that's what I'm trying  
24 to figure out.  
25 If we look at the index of your

Page 64

1  
2 report, so Exhibit 5, page 2 is the index.  
3 And particularly in J, Compliance Metric  
4 Application.  
5 Do you see -- are you with me?  
6 A. I'm with you.  
7 Q. The twice trailing 12-month  
8 average, which you referred to as the  
9 double national average metric, that's a  
10 metric that the lawyers in the case asked  
11 you to run, correct? You didn't develop  
12 that? You didn't think of that yourself,  
13 right?  
14 A. I would say that's a fair  
15 representation.  
16 Q. Same is true for the triple  
17 national average right below, right? The  
18 lawyers asked you to do that analysis; you  
19 didn't generate that?  
20 A. I would say that's a fair --  
21 Q. Same with the McKesson 8,000 rule  
22 metric, the lawyers in the case asked you  
23 to run that metric; that's not something  
24 you thought of on your own, right?  
25 A. Correct.

Page 65

1  
2 Q. The same with the trailing  
3 six-month threshold, which you referred to  
4 as "common sense," that's something that  
5 the lawyers asked you to run.  
6 You didn't come up with that  
7 yourself, right?  
8 A. Correct.  
9 Q. You who came up with the term  
10 "common sense"?  
11 A. I've always heard of that metric  
12 being called that.  
13 Q. That's not your term? Somebody  
14 else told that to you?  
15 A. That's correct.  
16 Q. And you certainly don't use that  
17 term to mean that it's your opinion that  
18 this is the common sense answer.  
19 That is not how you use that  
20 term, correct?  
21 A. Correct. It's any one of these  
22 that has quotes in it is -- well, really,  
23 that is the only one that does after the  
24 correction sheet, so, yes.  
25 Q. And is it your opinion that J4,

<p style="text-align: right;">Page 66</p> <p>1</p> <p>2 the maximum monthly trailing six-month</p> <p>3 threshold, is the most common sense in the</p> <p>4 ordinary use of that term? That is not</p> <p>5 your opinion, is it?</p> <p>6 A. That is not my opinion.</p> <p>7 Q. Okay. And then No. 5, the</p> <p>8 Qualitest, Endo, 25/50 percent national</p> <p>9 average, the lawyers in the case asked you</p> <p>10 to run that.</p> <p>11 That was not a metric you came up</p> <p>12 with, right?</p> <p>13 A. Correct, with a clarification.</p> <p>14 So on some of the labeler</p> <p>15 metrics, some of them were found by</p> <p>16 attorneys and some we found on our own by</p> <p>17 reading documents.</p> <p>18 Q. So that's exactly what I want to</p> <p>19 find out.</p> <p>20 Which ones did you find all on</p> <p>21 your own that lawyers didn't ask you to do?</p> <p>22 A. I don't know specifically. I</p> <p>23 actually didn't keep track. It was kind of</p> <p>24 a --</p> <p>25 Q. All of the documents that you</p>	<p style="text-align: right;">Page 68</p> <p>1</p> <p>2 work? Did you say, I'd like to see</p> <p>3 documents of X category, provide them to</p> <p>4 me? Or did you search the whole relativity</p> <p>5 database and found them on your own? Just</p> <p>6 generally, how did that process go?</p> <p>7 A. A little bit of both. So to the</p> <p>8 extent that lawyers had already identified</p> <p>9 documents of categories, so we said give me</p> <p>10 compliance documents, those would be</p> <p>11 already provided to us.</p> <p>12 To the extent we felt like we</p> <p>13 wanted to find more, we'd go looking.</p> <p>14 Q. Going back to the index of</p> <p>15 Exhibit 5, No. J5, this Qualitest, Endo</p> <p>16 metric, that was a metric that the</p> <p>17 attorneys asked you to run, correct?</p> <p>18 A. Correct, or that we found.</p> <p>19 Q. You don't know which?</p> <p>20 A. I don't. I'm sorry, I don't know</p> <p>21 which.</p> <p>22 Q. And what about No. 6, J6, the</p> <p>23 Qualitest, Endo 30,000 rule, that's a</p> <p>24 metric that the attorneys asked you to run?</p> <p>25 That was their idea, correct?</p>
<p style="text-align: right;">Page 67</p> <p>1</p> <p>2 were provided in this case were provided to</p> <p>3 you by the lawyers in the case, right?</p> <p>4 A. No. We had access to anything</p> <p>5 that we had asked for, and I also could</p> <p>6 search for documents.</p> <p>7 Q. So what documents -- did you get</p> <p>8 any documents that did not come to you</p> <p>9 through the lawyers in the case?</p> <p>10 A. Yes.</p> <p>11 MS. CONROY: Objection.</p> <p>12 BY MS. LEVY:</p> <p>13 Q. And what types of documents were</p> <p>14 those?</p> <p>15 A. There were a few compliance</p> <p>16 documents --</p> <p>17 Q. Let me -- I think we might be</p> <p>18 talking -- I might be asking the question</p> <p>19 in a confusing way.</p> <p>20 Internal company documents that</p> <p>21 you reviewed, those you were given access</p> <p>22 to by the lawyers in the case, right?</p> <p>23 A. That is correct. True. Let's</p> <p>24 say relativity.</p> <p>25 Q. Okay. And how did that process</p>	<p style="text-align: right;">Page 69</p> <p>1</p> <p>2 A. Or that we found.</p> <p>3 Q. You just don't know?</p> <p>4 A. I just don't know. I didn't keep</p> <p>5 track.</p> <p>6 Q. Same with 7, 8, 9, 10, 11, 12,</p> <p>7 whose idea was it to run those metrics?</p> <p>8 Are these things that you thought of out of</p> <p>9 the blue or metrics that the attorneys</p> <p>10 asked you to run?</p> <p>11 MS. CONROY: Objection.</p> <p>12 A. They're metrics that either the</p> <p>13 attorneys asked us to run or that we found</p> <p>14 in the compliance documents.</p> <p>15 Q. And you don't know which?</p> <p>16 A. I don't know. I mean, I do</p> <p>17 remember Mallinckrodt was known at the</p> <p>18 beginning, but I don't remember at what</p> <p>19 point these we found and others were given.</p> <p>20 Q. And then for part 1, the</p> <p>21 manufacturer prescriber analysis, was the</p> <p>22 methodology to look at IQVIA data and come</p> <p>23 up with this analysis, was that your idea</p> <p>24 or was that something that the lawyers</p> <p>25 asked you to do?</p>

Page 70

1  
2 A. That was what lawyers had asked  
3 me to do. They had asked me to apply the  
4 known compliance metrics to labelers' data  
5 which would have included chargebacks and  
6 IQVIA.  
7 Q. And then for part 2, the  
8 manufacturer to pharmacy analysis, that  
9 also was something that the lawyers asked  
10 you to do; they asked you to apply these  
11 various metrics to chargeback data,  
12 correct?  
13 A. To chargeback data, correct, or  
14 867 data.  
15 Q. What is 867 data?  
16 A. So I want to make sure I get the  
17 definition right because -- so let me flip  
18 to my report.  
19 (Document review.)  
20 A. Sorry, I wish you could do a  
21 control F while you're in the room. It  
22 would make things is so much easier.  
23 Q. Can you do that? I'll see if I  
24 can get Catie to narrow it quickly.  
25 (Document review.)

Page 71

1  
2 A. No, I can't find the definition.  
3 But I understand it to be -- go ahead -- to  
4 be data that the labelers have at their  
5 hands of where their opioids are going down  
6 to the pharmacy level.  
7 Q. Do you know anything else about  
8 867 data or does that reflect your entire  
9 understanding?  
10 A. I mean, I have some backup with  
11 me that I can pull up if you'd like. But I  
12 don't have a deep, deep knowledge of it. I  
13 understand just generally definitionally  
14 what it was and then what was provided to  
15 me.  
16 Q. And your understanding of what  
17 867 data is comes from what the attorneys  
18 told you in this case, correct?  
19 MS. CONROY: Objection.  
20 A. I also have a few documents that  
21 are in this list and reading through  
22 depositions of, like, understanding what it  
23 was.  
24 Q. How comprehensive is 867 data?  
25 Who has it and to what extent do they have

Page 72

1  
2 it? Do you know that?  
3 A. I only know what 867 data I  
4 received. And I believe I only received it  
5 from Purdue, but that -- that at least is  
6 all I've seen.  
7 Q. Okay. And you didn't do any  
8 analysis on anybody else's 867 data other  
9 than Purdue?  
10 A. That I was aware of, yes.  
11 Q. Okay. What is 852 data?  
12 A. It's just another type of data  
13 that labelers have to them.  
14 Q. Can you be more specific than  
15 that?  
16 A. I don't -- I have never seen it,  
17 so I don't know that much about it. But I  
18 understand it to be more of a labeler to  
19 manufacturer.  
20 Q. What it is, who has it, how  
21 comprehensive it is, all of that is beyond  
22 the scope of your expertise, correct?  
23 A. For 852 data, yes.  
24 Q. And 867 data, too?  
25 A. Correct. I would say I only use

Page 73

1  
2 the data as I saw it and know of that exact  
3 data set and those Bates numbers.  
4 Q. When you used the term -- strike  
5 that.  
6 Chargeback data, you are familiar  
7 with and did a number of analyses on  
8 chargeback data, correct?  
9 A. That is correct.  
10 Q. I am not an expert in data  
11 science, so I'm going to try to get this  
12 right.  
13 But in your backup files, you  
14 have an enormous file with all of the  
15 chargeback data that you were given in this  
16 case, correct?  
17 A. Yes. I think you're referring to  
18 the aggregated, we call it the chargeback  
19 summary table.  
20 Q. And the title of that file is  
21 called chargeback\_flagging, correct?  
22 A. So I think there are two tables.  
23 There's one, the base chargebacks table,  
24 and then that table is used to run  
25 flagging. And when I say "flagging," I



<p style="text-align: right;">Page 74</p> <p>1</p> <p>2 mean the compliance metrics.</p> <p>3 Q. The metrics that are reflected in</p> <p>4 your report. I tried to print it. It was</p> <p>5 so --</p> <p>6 A. Oh, no.</p> <p>7 Q. It was very hard.</p> <p>8 But if I understand -- I've done</p> <p>9 some digging in your backup files.</p> <p>10 You were provided nationwide</p> <p>11 chargeback data, correct?</p> <p>12 A. I think so, yes.</p> <p>13 Q. And one of the columns in the</p> <p>14 enormous amount of data is Buyer County,</p> <p>15 correct?</p> <p>16 A. Correct.</p> <p>17 Q. And that allowed you to look at</p> <p>18 chargeback data by county?</p> <p>19 A. Yes.</p> <p>20 Q. So you can isolate a chargeback</p> <p>21 in Cuyahoga County or in Summit County,</p> <p>22 right?</p> <p>23 A. Yes, to the best that we could</p> <p>24 identify the county, because not all</p> <p>25 chargeback data had a county.</p>	<p style="text-align: right;">Page 76</p> <p>1</p> <p>2 159(b) -- well, let me back up.</p> <p>3 Page 85 of your report describes</p> <p>4 the methodology you followed in this case,</p> <p>5 correct?</p> <p>6 A. To the best that we could, yes.</p> <p>7 Q. And Section 1 in paragraph 159 on</p> <p>8 page 85 describes how you treated six of</p> <p>9 the labeler defendants.</p> <p>10 Do you see that in paragraph</p> <p>11 159(b)?</p> <p>12 A. Yes, table 75.</p> <p>13 Q. Okay. Table 75 on page 85 shows</p> <p>14 how you have grouped particular labels into</p> <p>15 combined labeler names.</p> <p>16 Is that what that table reflects?</p> <p>17 A. Yes.</p> <p>18 Q. So how did you come up with these</p> <p>19 groupings? What methodology did you use to</p> <p>20 come up with these groupings?</p> <p>21 A. I understood them to be the</p> <p>22 subsidiaries or part of the grouped</p> <p>23 labeler.</p> <p>24 Q. And how did you arrive at that</p> <p>25 understanding?</p>
<p style="text-align: right;">Page 75</p> <p>1</p> <p>2 Q. Okay.</p> <p>3 MS. LEVY: Can we take a break?</p> <p>4 Thanks. Let's go off the record.</p> <p>5 THE VIDEOGRAPHER: The time is</p> <p>6 10:19 a.m. We are now off the record.</p> <p>7 (Recess is taken.)</p> <p>8 THE VIDEOGRAPHER: The time is</p> <p>9 10:37 a.m. We are now back on the</p> <p>10 record.</p> <p>11 BY MS. LEVY:</p> <p>12 Q. Ms. Keller, before the break, we</p> <p>13 talked about several data sets, including</p> <p>14 ARCOS, A-r-c-o-s, data.</p> <p>15 To what extent did you use ARCOS</p> <p>16 data for your report in this case?</p> <p>17 A. I believe there is one metric</p> <p>18 that required the use of ARCOS data. And</p> <p>19 that would be the Qualitest 25, 50.</p> <p>20 Q. On page 18 of your report?</p> <p>21 A. 18 to 19, yes.</p> <p>22 Q. Can you turn with me to page 85</p> <p>23 of your report?</p> <p>24 (Witness complies.)</p> <p>25 Q. Specifically, paragraph 159. In</p>	<p style="text-align: right;">Page 77</p> <p>1</p> <p>2 Is that something that the</p> <p>3 lawyers told you?</p> <p>4 A. Yes, through our own research,</p> <p>5 through what the lawyers told us, through</p> <p>6 corporate filing documents that we had</p> <p>7 access to, yes.</p> <p>8 Q. Did you review corporate filing</p> <p>9 documents in order to come up with these</p> <p>10 groupings in table 75?</p> <p>11 A. It was a summary of corporate</p> <p>12 filing documents. So it was like, you</p> <p>13 know, for example, this entity and this</p> <p>14 entity cite this filing document.</p> <p>15 Q. So you had access to a summary of</p> <p>16 the corporate groupings in order to come up</p> <p>17 with table 75?</p> <p>18 A. I think that would be correct.</p> <p>19 Q. I don't see that cited anywhere</p> <p>20 in your report.</p> <p>21 Where is the cite to whatever it</p> <p>22 was that you used to come up with these</p> <p>23 groupings? Where is that summary? Where</p> <p>24 would I go to find it?</p> <p>25 A. We could provide that, I guess,</p>



Page 78

1  
2 if it wasn't part of the documents.  
3 Q. Who prepared the summary of the  
4 documents that you used to do these  
5 groupings?  
6 The lawyers prepared that, right?  
7 A. Yes.  
8 Q. Basically they told you who to  
9 use and what groupings, right?  
10 A. That would be correct, yes.  
11 Q. And table 75, it looks like for  
12 purposes of your report, you have assumed  
13 that the labelers in the right-hand column  
14 are subsidiaries of the parents in the  
15 left-hand column; is that correct?  
16 MS. CONROY: Objection.  
17 A. Yes, I think that's accurate.  
18 Q. And so you're assuming that  
19 Allergan, Inc. is a subsidiary of Teva; is  
20 that right?  
21 A. Yes.  
22 Q. And looking also on table 7 of  
23 your report, which is on, I believe --  
24 MR. LEDLIE: 29, I believe.  
25 BY MS. LEVY:

Page 79

1  
2 Q. -- page 29.  
3 I'm sorry, that is the wrong one.  
4 Page 28 of your report, table 6.  
5 (Document review.)  
6 Q. Are you with me?  
7 A. Yes.  
8 Q. Okay. In the left-hand column,  
9 it says Parent Company. In the right-hand  
10 column, it has different label names.  
11 Do you see that?  
12 A. In the right-hand column, it has  
13 different label -- help me out here.  
14 Different than table 77?  
15 Q. I'm sorry. Let me reask that in  
16 a less confusing way.  
17 Right now I am looking at page 28  
18 of your report in table 6.  
19 A. I'm there.  
20 Q. Okay. The left-hand column in  
21 table 6 is labeled Parent Company.  
22 What does that mean?  
23 A. It's like the parent company of  
24 the labelers to the right or how we, I  
25 would say, collectively referred to those,

Page 80

1  
2 that company and its subsidiaries  
3 throughout the report or through -- it's a  
4 way to show who's part of -- when I say,  
5 let's say in table 8, when I say Endo, who  
6 is part of that Endo number.  
7 Q. So in other words, taking the  
8 Endo example, when you refer to Endo, you  
9 are assuming that Endo, Par and Qualitest  
10 are all subsidiaries of Endo, correct?  
11 A. Correct.  
12 Q. And these were assumptions you  
13 were asked to make based on the summary you  
14 were provided? These are not independent  
15 conclusions of your own, correct?  
16 A. Yes. To some extent. I mean,  
17 I've done some research on my own to make  
18 sure that we're getting the odd subsidiary  
19 names, to make sure that those are correct.  
20 And I want to point out that  
21 table 77 is an ARCOS table. The groupings  
22 for the chargeback -- or, I'm sorry, for  
23 the IQVIA table -- I'm sorry. Let me make  
24 sure I'm saying this right.  
25 Table 75, which is where we

Page 81

1  
2 started, that's an ARCOS table.  
3 Table 6 is an IQVIA table.  
4 Q. In both sets of analyses, you  
5 were asked to use the same assumptions as  
6 to whose parent companies go with which  
7 subsidiaries, correct?  
8 A. That's correct.  
9 Q. And those were assumptions that  
10 the lawyers asked you to make, correct?  
11 A. Yeah, or that we knew ourselves,  
12 yes.  
13 Q. Okay. So looking specifically on  
14 page 28, we've talked about Endo. I want  
15 to look down at the Teva parent company.  
16 And here, you have listed as Teva  
17 as the parent company and then you have  
18 Actavis, Allergan and Teva as the labelers  
19 that belong with that parent.  
20 Do you see that?  
21 A. I do see that.  
22 Q. Did you do independent analysis  
23 to arrive at that specific grouping or is  
24 that one that the lawyers asked you to  
25 make?

Page 82

1  
2 A. A little bit of both.  
3 Q. Okay. What specific independent  
4 analysis did you do to determine that  
5 Allergan is a subsidiary of Teva?  
6 A. We read online documents, some  
7 corporate history of the companies on their  
8 websites.  
9 Q. And who did that work?  
10 A. I reviewed it, as well as another  
11 staff of mine.  
12 Q. And tell me what you know about  
13 the relationship between Allergan and Teva.  
14 What did your research on that  
15 show?  
16 A. I'd have to recall exactly, but I  
17 recall a long history of one -- the company  
18 begetting another and those -- the  
19 corporate history, I would say, is maybe  
20 complicated.  
21 Q. You are not being offered as an  
22 expert in corporate history, I assume?  
23 A. No.  
24 Q. And that is beyond your expertise  
25 or anything that you would be comfortable

Page 83

1  
2 opining on, correct?  
3 A. Yes, that would be correct.  
4 Q. You don't know, as you sit here  
5 today, if Allergan is a subsidiary of Teva?  
6 That is not something that you have  
7 knowledge of?  
8 A. Not that is different than what's  
9 purported in this report, then no.  
10 Q. So I think I need to get more  
11 clarity on that.  
12 You have treated Allergan as a  
13 subsidiary of Teva for purposes of some of  
14 your analyses in this report, right?  
15 A. That's correct.  
16 Q. But as you sit here today, you  
17 don't know if, in actuality, Allergan  
18 really is a subsidiary of Teva? That's not  
19 something that you know, is it?  
20 A. I think that's correct.  
21 Q. And in the ARCOS data and in the  
22 IQVIA data, you recognize from your data  
23 work that Allergan is, in fact, separate  
24 from Teva?  
25 They have different NDC labeler

Page 84

1  
2 codes, correct?  
3 A. In ARCOS, they have different NDC  
4 codes. In IQVIA, IQVIA has its own IQVIA  
5 code in there, and so that's assigned by  
6 IQVIA.  
7 Q. In the IQVIA data, Allergan is  
8 also different from Teva, isn't it?  
9 A. It appears so, yes.  
10 Q. All right. So going back to your  
11 report overview on page 16 where you begin  
12 to describe in table 1, the labeler market  
13 shares in Summit County and in table 2, the  
14 labeler market shares in Cuyahoga County.  
15 Do you see that?  
16 A. I do.  
17 Q. And what is the source of the  
18 data that you drew from to create these  
19 market shares? The sources is IQVIA data,  
20 correct?  
21 A. That is correct.  
22 Q. In this IQVIA data, you could  
23 have separated out the entities that you  
24 believe are subsidiaries of Teva, but you  
25 did not do that, right?

Page 85

1  
2 A. I believe I could.  
3 Q. And same for Endo, you could have  
4 separated out the entities that were  
5 subsidiaries of Endo in your view, but you  
6 did not do that, correct?  
7 A. Yes. I could break Endo into  
8 Endo generic, Endo labs and Par.  
9 Q. And you could break Teva into --  
10 you could break Allergan out from Teva as  
11 well? That's something else you could have  
12 done?  
13 A. I could break Allergan, Teva -- I  
14 could break Allergan and Teva out from  
15 Teva.  
16 Q. And what would, for example,  
17 Allergan's market share have been if you  
18 had broken it out in table 1 in Cuyahoga  
19 and Summit?  
20 A. I'd have to run that number.  
21 Q. You've never run that?  
22 A. I don't think so, no.  
23 Q. Okay. And the same is the true  
24 for the other subsidiaries that you've  
25 wrapped into the parents, you've never run

Page 86

1  
2 them separately, correct?  
3 A. That is correct.  
4 Q. And the reason you didn't is  
5 because you were asked to assume these  
6 groupings and to present the data this way;  
7 is that right?  
8 MS. CONROY: Objection.  
9 A. Yes or from our own  
10 understanding. Yes.  
11 Q. Well, that's what I want to know.  
12 Which one was it?  
13 With Allergan specifically,  
14 because that's my client, were you asked to  
15 group it with Teva or did you independently  
16 decide to do it that way?  
17 A. I would say it would be most  
18 correct to say that we had grouped them  
19 from doing this for a long time and that it  
20 was agreed upon that that was okay.  
21 Q. Okay.  
22 A. So the data doesn't come that  
23 way. I have to process it and do the  
24 groupings. We presented the groupings. We  
25 continued with those groupings as agreed

Page 87

1  
2 upon.  
3 Does that help?  
4 Q. And so when you talk in table 7,  
5 for example, about Allergan and you do  
6 break it out for table 7, what is the  
7 difference there in Allergan and Teva?  
8 What Allergan products?  
9 A. I'm sorry, table 7?  
10 Q. I'm sorry, my fault. Let me  
11 reask the question.  
12 Table 6. I keep saying 7, but  
13 it's table 6.  
14 In table 6 on page 28, what I  
15 really would like to understand is what you  
16 understand the difference between Allergan  
17 and Teva in that table?  
18 A. So for that table, I think there  
19 were -- the purpose of this table is to  
20 show compliance metrics over time, and so  
21 there were differences over time.  
22 And so to the extent that we  
23 could help show that granularity, that was  
24 the purpose of breaking them apart.  
25 Q. But you didn't ask -- you

Page 88

1  
2 didn't -- you were not asked to and you  
3 didn't look specifically at Allergan?  
4 MS. CONROY: Objection.  
5 A. As far as we were presenting  
6 results, let's say, ala, table 1 and 2,  
7 correct.  
8 Q. Now beginning on page 16 in  
9 Section J, you describe your compliance  
10 metric application.  
11 Are you with me?  
12 A. Yes.  
13 Q. And you state in paragraph 51, "I  
14 was instructed by counsel to apply metrics  
15 derived and used by any manufacturer or  
16 distributor and also to apply metrics  
17 applied in enforcement actions, McKesson  
18 and Masters, to all data sets to detect  
19 prescribing and purchasing patterns of  
20 unusual size, frequency and pattern."  
21 Do you see that?  
22 A. I do.  
23 Q. When you say "I was instructed by  
24 counsel," who does that refer to? What  
25 counsel?

Page 89

1  
2 A. That would refer to Linda Singer.  
3 Q. And so when we talk about  
4 counsel, it's Linda Singer who asked you to  
5 do these various metrics that we are going  
6 to talk about in a minute?  
7 A. Linda Singer provided us with the  
8 assignment, yes.  
9 Q. In No. 1 -- well, this term that  
10 is used in the end of paragraph 51,  
11 "patterns of unusual size, frequency and  
12 pattern" and there is a cite there, what is  
13 that cite? Do you know?  
14 A. I understand that to be the Code  
15 of Federal Regulations when it comes to  
16 diversion, but I'd have to have the actual  
17 language in front of me to know.  
18 Q. I don't mean to give you a memory  
19 quiz on the cites. That is not the purpose  
20 of the question.  
21 There are no specific  
22 requirements for how a registrant is  
23 supposed to calculate patterns of unusual  
24 size, frequency, and purchasing patterns of  
25 a -- sorry, let me ask the question again.

Page 90

1  
2           You are not aware of any specific  
3 rules or regulations for a registrant on  
4 how to calculate patterns of unusual size  
5 or frequency, correct?  
6       A. So I think, as I stated earlier,  
7 that's not my area of expertise.  
8       Q. And you're not aware of any?  
9       A. I wouldn't be able to say, but...  
10       Q. Okay. The first metric that you  
11 employ is double the national average. And  
12 I'm looking now on page 17.  
13       A. Correct.  
14       Q. Are you with me?  
15       And that metric, again, was one  
16 that Linda Singer asked you to do, correct?  
17       A. Correct.  
18       Q. And you didn't find it in any DEA  
19 regulations?  
20       A. Correct.  
21       Q. You are not aware of any place in  
22 the real world where this metric is used,  
23 correct?  
24       MS. CONROY: Objection.  
25       A. I wouldn't know for sure.

Page 91

1  
2       Q. Do you have a guess?  
3       MS. CONROY: Objection.  
4       A. No.  
5       Q. Okay. And you are -- I think you  
6 already answered this earlier, but you are  
7 not offering any opinion that this metric  
8 is somehow a requirement on registrants,  
9 right? That is not your opinion?  
10       A. Correct. That's not my area of  
11 expertise.  
12       Q. And you are not offering an  
13 opinion that failure to employ this metric  
14 is somehow unlawful or misconduct?  
15       That is beyond your expertise,  
16 correct?  
17       A. Correct.  
18       Q. Going to the second metric that  
19 you applied, triple national average,  
20 again, that metric you were asked to run by  
21 Linda Singer, correct?  
22       A. Correct.  
23       Q. That did not come from any DEA  
24 guidance or any DEA regulations, correct?  
25       A. Correct.

Page 92

1  
2       Q. You do not know of any place in  
3 the real world that applies that average,  
4 correct?  
5       MS. CONROY: Objection.  
6       A. I wouldn't know.  
7       Q. And it is not your opinion that  
8 any registrant should have or had any  
9 requirement to employ that metric in the  
10 real world? That is not the opinion you're  
11 offering in this case, correct?  
12       A. Correct, that's not my area of  
13 expertise.  
14       Q. Looking at No. 3, the McKesson  
15 8,000 rule, again -- I apologize if this is  
16 getting tedious. The McKesson 8,000 rule  
17 is a metric that you are asked to apply by  
18 Linda Singer, correct?  
19       A. Correct.  
20       Q. And you were asked to look at  
21 what would the data show if you used this  
22 set of assumptions, right?  
23       MS. CONROY: Objection.  
24       A. Yes.  
25       Q. Like No. 1 and 2, the McKesson

Page 93

1  
2       8,000 rule is not a metric that you have  
3 ever seen in any DEA guidance or  
4 regulation, correct?  
5       A. I think that's correct.  
6       Q. Are you aware of any limitation  
7 anywhere in the DEA regulations or in the  
8 Controlled Substances Act or any guidance  
9 interpreting them that puts a specific  
10 limitation on dosage units?  
11       MS. CONROY: Objection.  
12       A. I would say that's outside of my  
13 expertise.  
14       Q. And it is not your opinion in  
15 this case that any particular defendant was  
16 required or obligated to employ this metric  
17 in running its business, correct?  
18       A. That's correct. That's outside  
19 of my expertise.  
20       Q. Even with respect to McKesson, it  
21 is outside your area of expertise to say  
22 that anybody, McKesson or anybody else, had  
23 a duty to run a metric in the way that you  
24 have, right?  
25       A. Yes, I believe that is correct.

Page 94

1

2 Q. Going down to No. 4, Maximum

3 Monthly Trailing Six-Month Threshold, which

4 in parentheses says, quote, "common sense."

5 I think you told me this before

6 the break, common sense is not a term that

7 you came up with, right?

8 A. Correct. I've heard this rule

9 referred to colloquially as the common

10 sense rule.

11 Q. Who have you heard that

12 colloquially? Who has referred to this

13 rule as the common sense rule?

14 A. I honestly couldn't remember.

15 It's been -- I've heard it so many times

16 that I --

17 Q. Had you heard it from lawyers in

18 the case?

19 A. Sure.

20 Q. Have you ever heard it from DEA?

21 A. No. Like I said, I only spoke to

22 the DEA about the ARCOS data.

23 Q. Okay. And it is not your opinion

24 in this case that this metric is the most

25 sensible metric? Even though the term

Page 95

1

2 might suggest that, that's actually not

3 your opinion in this case. Am I right

4 about that?

5 A. That's correct.

6 Q. Okay. Have you read the Masters

7 Pharmaceutical opinion from the D.C.

8 circuit in 2017?

9 A. I think I skimmed it a while ago.

10 Q. You don't intend to offer any

11 opinions about what the law is as a result

12 of that opinion, correct?

13 A. That's correct.

14 Q. And you don't intend to offer any

15 opinions as to what the law might require

16 as a result of that opinion, do you?

17 A. That's correct.

18 Q. Okay. Sorry, back to the common

19 sense threshold. That is not a threshold

20 that came from -- where did that threshold

21 come from?

22 A. Do you mean where was the metric

23 derived or?

24 Q. Yes. Where was metric derived?

25 A. So I have it -- whatever citation

Page 96

1

2 I have there, that's where it would have

3 been derived from.

4 Q. And beyond that, you don't know

5 anything other than you were asked to run

6 it, correct?

7 A. Yeah, I was asked to review the

8 metric and implement it on the data.

9 Q. With respect to the Qualitest

10 Endo 25/50 percent national average, that

11 metric also came -- that metric was

12 presented to you by the attorneys as

13 something that you should run based on

14 documents that you were provided, correct?

15 A. It was either a metric that we

16 found or the attorneys provided. I

17 honestly can't remember.

18 Q. And for this metric, which was

19 it? Did you stumble across a document and

20 say, hey, we should run this? Or did the

21 attorneys provide you documents and say

22 based on these documents, we'd like for you

23 to run it as if this were the law of the

24 land?

25 MS. CONROY: Objection.

Page 97

1

2 A. I'd really have to review my

3 notes to know for sure. I don't remember.

4 Q. Okay. And you don't recall

5 seeing this metric in any directive from

6 DEA or any guidance from DEA? That's not

7 your opinion in this case?

8 A. That's correct. I don't recall

9 seeing it in any guidance, nor is it my

10 opinion to offer.

11 Q. And I think, to short-circuit

12 this, if we look at page 19, 20, 21, and 22

13 of your report, those list other metrics

14 that you were asked to run, correct?

15 A. Yes. I would say I was asked to

16 review the documents, interpret the metrics

17 and run them on the data.

18 Q. You will not offer any opinion in

19 this case as to whether these metrics are

20 appropriate for a registrant to do in real

21 life, whether a registrant should have done

22 them or had any requirement to do them in

23 real life? That is outside of the scope of

24 the opinions you intend to offer in this

25 case, correct?



<p style="text-align: right;">Page 98</p> <p>1</p> <p>2 A. Correct.</p> <p>3 Q. With respect to every one of the</p> <p>4 metrics that are listed in 19 through 21 of</p> <p>5 your report, you have no opinion as to</p> <p>6 whether there was a duty to do them,</p> <p>7 whether it was feasible in the real world</p> <p>8 to do them, or what the result would have</p> <p>9 been had a registrant attempted to</p> <p>10 implement these metrics?</p> <p>11 All of that is beyond the scope</p> <p>12 of what you have been asked to opine on,</p> <p>13 correct?</p> <p>14 MS. CONROY: Objection.</p> <p>15 A. So I would say all the metrics in</p> <p>16 17 through 22, so all of them that we've</p> <p>17 covered today and that are in the report, I</p> <p>18 would not be offering that opinion,</p> <p>19 correct.</p> <p>20 Q. Okay. Let's go to page 23,</p> <p>21 Manufacturer to Prescriber Analysis.</p> <p>22 Table 4 reflects your work with</p> <p>23 IQVIA -- is that how you pronounce it? How</p> <p>24 do you say it?</p> <p>25 A. I say IQVIA.</p>	<p style="text-align: right;">Page 100</p> <p>1</p> <p>2 A. Yes, it does not include 2007,</p> <p>3 which would only increase any of the</p> <p>4 numbers or -- depending on the metrics,</p> <p>5 either increased the number of transactions</p> <p>6 or might impact this.</p> <p>7 Q. Do you know whether the 2007 data</p> <p>8 is actually missing or whether it's</p> <p>9 actually in your reliance materials but</p> <p>10 just in a different format than the rest of</p> <p>11 the years? Have you looked at that issue?</p> <p>12 A. So I actually just -- we just</p> <p>13 found this out this week that the 2007 data</p> <p>14 is in the production and the reliance</p> <p>15 materials that we listed. It was in such a</p> <p>16 different format in function, and we were</p> <p>17 provided no data dictionary on how to</p> <p>18 process it, that we didn't feel comfortable</p> <p>19 with including it because it didn't look</p> <p>20 like any of the other years.</p> <p>21 We weren't quite sure if it was a</p> <p>22 secondary file because we just had the</p> <p>23 Bates number and nothing, like, else to</p> <p>24 process it. So we felt that it was most</p> <p>25 conservative to leave it out as opposed to</p>
<p style="text-align: right;">Page 99</p> <p>1</p> <p>2 Q. IQVIA.</p> <p>3 A. I've heard it IQVIA. I've heard</p> <p>4 it all. I'm from Kansas. I'm not super</p> <p>5 good at pronouncing words.</p> <p>6 Q. Me either.</p> <p>7 A. We said Par-mee-zian cheese for a</p> <p>8 long time --</p> <p>9 Q. Really?</p> <p>10 A. -- instead of Parmesan.</p> <p>11 Q. Parmesan.</p> <p>12 IQVIA, I say it both ways.</p> <p>13 You looked at that set of data</p> <p>14 and based on your data analytics, you</p> <p>15 grouped prescribers by specialty and the</p> <p>16 results of that work is reflected in table</p> <p>17 4; is that right?</p> <p>18 A. Yes. And the groupings are in</p> <p>19 the methodology.</p> <p>20 Q. Now your report suggests that you</p> <p>21 were missing data for 2017, right?</p> <p>22 A. For 2007.</p> <p>23 Q. I'm sorry, for 2007.</p> <p>24 So your analyses skipped 2007; is</p> <p>25 that right?</p>	<p style="text-align: right;">Page 101</p> <p>1</p> <p>2 maybe including some data erroneously.</p> <p>3 Q. Okay. That's what I thought you</p> <p>4 would say.</p> <p>5 Does anything that you have</p> <p>6 subsequently seen in the 2007 data change</p> <p>7 your report or your opinions in any way?</p> <p>8 A. So to be honest, we're still</p> <p>9 loading that data. But I would say that it</p> <p>10 wouldn't because all it would do is just</p> <p>11 create a bigger base on which to run</p> <p>12 that --</p> <p>13 Q. And just really fill in the gap</p> <p>14 of that one year in a 20-year period that</p> <p>15 you didn't have hard data and had to</p> <p>16 extrapolate, right?</p> <p>17 A. Correct. And I would say there's</p> <p>18 some metrics that have a lookback period</p> <p>19 that are somewhat impacted by that lack of</p> <p>20 data because you can't employ those when</p> <p>21 you're missing a year of data, so those</p> <p>22 would be impacted.</p> <p>23 Q. Do you have any present intention</p> <p>24 to create a supplemental report in this</p> <p>25 case?</p>



Page 102

1  
2 A. I don't know.  
3 Q. Do you have a supplemental report  
4 in process?  
5 A. No.  
6 Q. Okay. And if your opinions  
7 change in any way as a result of additional  
8 analysis of the 2000 [sic] data or for any  
9 other reason, we would ask that you bring  
10 that to the attention of counsel.  
11 A. Of course.  
12 Q. Okay. Page 27 of the report,  
13 paragraph 76, heading No. 1 at the top of  
14 page 27.  
15 Are you with me?  
16 A. I am.  
17 Q. It says, "Defendant access to  
18 IQVIA data."  
19 And then down in paragraph 78 you  
20 make the statement that "Each of the  
21 defendant labelers had access to IQVIA  
22 XPONENT data."  
23 Do you see that?  
24 A. I do.  
25 Q. That is an assumption that you

Page 103

1  
2 were asked to make. You did not look at  
3 each labeler and do an analysis of what  
4 data each labeler had during what time  
5 periods in the real world? You did not do  
6 that, did you?  
7 A. I would say it's a mix.  
8 Q. Okay.  
9 A. It was an assumption that we made  
10 at the beginning of the report. But we  
11 also, in part of the reliance materials  
12 that are provided to you today, also  
13 include dates in which we identified  
14 defendant access to -- defendant labeler  
15 access, I should be more specific, to the  
16 IQVIA XPONENT data or purchase. I should  
17 say purchase, not access.  
18 Q. So let's go through on page 28 in  
19 table 6.  
20 For Endo, did you an analysis of  
21 what IQVIA data Endo had in its files, what  
22 type of IQVIA data Endo actually had, and  
23 for what years in the 20-year time period  
24 that you looked at? Is that something that  
25 you did?

Page 104

1  
2 A. I would say yes.  
3 Q. Okay. And what is the answer for  
4 Endo?  
5 A. I'd have to pull up my files to  
6 look specifically.  
7 Q. You don't know?  
8 A. I don't remember, no.  
9 Q. Okay. Do you know -- can you  
10 say, as you sit here, are you going to give  
11 the opinion that Endo actually had the full  
12 set of IQVIA data in its files for the  
13 whole 20-year period? Is that an opinion  
14 you intend to offer in this case?  
15 A. So I would say it's an assumption  
16 of the report but not an opinion, yes.  
17 Q. Okay. And so I just want to --  
18 I'm not trying to be tricky. I'm looking  
19 at the first statement in 78. You say,  
20 "Each of the defendant labelers had access  
21 to IQVIA XPONENT data."  
22 What you mean by that is they  
23 could have purchased that data, right?  
24 A. I would say that's correct, if  
25 they didn't already purchase some form of

Page 105

1  
2 it, yes.  
3 Q. And in -- some of the labelers or  
4 some of the defendants in this case might  
5 have purchased some data for some time  
6 periods. And you do not know and did not  
7 do a deep analysis of every single labeler,  
8 every single time period? You didn't do a  
9 look at what each labeler had in the real  
10 world, right?  
11 A. We had a -- we had a high level  
12 review, but I couldn't write a report on  
13 each labeler's access on every year, no.  
14 Q. And the metrics that you run that  
15 flow from the IQVIA data are based on the  
16 assumption that any of these labelers could  
17 have had it all, but not assuming that they  
18 actually did have it all in the real world?  
19 A. Yes.  
20 Q. And --  
21 A. When you say "it all," I would  
22 say -- I want to clarify that, if you're  
23 saying that the Allergan data is it all. I  
24 don't know what the "all" could be from  
25 IQVIA. You know, I know only what Allergan

Page 106

1  
2 had produced. So to that extent.  
3 Q. And so when you're talking about  
4 what Allergan produced, let's look at -- I  
5 think I know what you're referring to, but  
6 I want to make sure we're clear. It's  
7 footnote --  
8 A. Actually I think it's in that --  
9 Q. I think it's on page 28 and  
10 footnote 81 in your report.  
11 When you talk about the data that  
12 Allergan produced, is that what you're  
13 referring to?  
14 A. Yes. When I talk about the IQVIA  
15 data that we're using throughout the  
16 report, that was the Bates number given to  
17 me for that production.  
18 Q. And you have no idea whether  
19 Allergan had that data in its possession  
20 during the time period you're analyzing  
21 between 2000 and -- or 1997 and 2017?  
22 You don't know whether Allergan  
23 had that body of data then or purchased it  
24 later like for litigation? You don't know  
25 that, do you?

Page 107

1  
2 A. I would not know that, no.  
3 Q. Okay. And so you're not  
4 assuming -- let me phrase it differently.  
5 Strike that.  
6 When you say in paragraph 78 that  
7 each of the defendant labelers had access  
8 to IQVIA data, you mean had access to the  
9 data that is referred to in 81, the  
10 footnote?  
11 MS. CONROY: Objection.  
12 A. I would say they could have had  
13 access to the data referred to in footnote  
14 81.  
15 Q. And you've drawn the exact  
16 distinction that I'm trying to hone in on.  
17 They could have had access. You  
18 don't know and you did not analyze on a  
19 labeler-by-labeler basis who did have  
20 access to it and specifically when they had  
21 access to it and specifically which piece  
22 of footnote 81 that each labeler had access  
23 to? You did not drill down and look at the  
24 minutia of that, did you?  
25 A. I would say some of the reliance

Page 108

1  
2 that I've read today does look at that, but  
3 not every year for every labeler. It  
4 goes -- it reviews -- I don't even want to  
5 the say what percentage, but we did look at  
6 a high level to make sure. Or I would say  
7 the materials that we've provided to date  
8 will reflect, let's say, purchase orders  
9 from Purdue for several years of Xponent  
10 data and reveal -- and show what data or  
11 what baskets of data, I think is what they  
12 referred to them, might have been included  
13 as part of that purchase.  
14 Q. I think I understand.  
15 You have seen documents that  
16 reflect some purchases in some time periods  
17 of some Xponent IQVIA data, right?  
18 A. Correct.  
19 Q. You cannot say for Allergan what  
20 data Allergan had in what time period.  
21 That's not something you can do, right?  
22 A. If it's in the reliance, then I  
23 could. But other than that, no.  
24 Q. Gotcha.  
25 All you know about who had what,

Page 109

1  
2 when is what is in your reliance materials?  
3 A. Correct.  
4 Q. And for the Allergan data that  
5 you referred to in footnote 81, you do not  
6 know when that data was acquired or what  
7 portion of that data was received during  
8 the 20-year time period by Allergan or any  
9 other defendant in this case?  
10 You only know snippets from other  
11 documents; is that right?  
12 MS. CONROY: Objection.  
13 A. Yes, I have documents that show  
14 purchases. Again, I don't have that data  
15 from that time provided to me.  
16 Q. Okay. I think I understand.  
17 And the thing I'm getting at, to  
18 demystify it, is you are not offering any  
19 opinions that the defendants in this case  
20 actually had all this data in their hands.  
21 Your opinion is, if they had it  
22 and if they looked at it in the way I did,  
23 here's what the metrics would have shown.  
24 Do you see the distinction I'm  
25 drawing?

<p style="text-align: right;">Page 110</p> <p>1</p> <p>2 A. I think I see the distinction.</p> <p>3 If we're talking about IQVIA, chargebacks,</p> <p>4 they of course had.</p> <p>5 Q. Okay. And you agree with me if</p> <p>6 we are talking about IQVIA? We'll talk</p> <p>7 about chargebacks in a minute. Am I right?</p> <p>8 A. I think so.</p> <p>9 Q. Okay. Let's look at page 30 of</p> <p>10 your report.</p> <p>11 (Witness complies.)</p> <p>12 Q. Page 30 in table 9. In table 9,</p> <p>13 you take four of the metrics and show a</p> <p>14 summary of what it would look like if these</p> <p>15 metrics would have been run, correct?</p> <p>16 A. Yes. We show what number of</p> <p>17 prescriptions would have been flagged by</p> <p>18 the compliance metrics if they were run,</p> <p>19 yes.</p> <p>20 Q. And when you say in the</p> <p>21 right-hand column any flag, again, this is</p> <p>22 depending on the metrics, you get different</p> <p>23 numbers.</p> <p>24 If you use double national</p> <p>25 average, you get a different number from</p>	<p style="text-align: right;">Page 112</p> <p>1</p> <p>2 that?</p> <p>3 A. Correct.</p> <p>4 Q. And so under your metrics, in</p> <p>5 table 10, we can see the number of</p> <p>6 physicians in Summit and Cuyahoga County</p> <p>7 who would have been flagged by the</p> <p>8 compliance metrics that you use, right?</p> <p>9 A. Correct.</p> <p>10 Q. And depending on which metric you</p> <p>11 use, your metrics would generate thousands</p> <p>12 and thousands of physicians in these two</p> <p>13 counties who get flags, right?</p> <p>14 A. I would say they're not my</p> <p>15 metrics, but by applying these metrics,</p> <p>16 yes, you would have.</p> <p>17 Q. And I think I know the answer</p> <p>18 now, but you are not suggesting that there</p> <p>19 are actually, looking at the first row,</p> <p>20 4,207 family or general physicians in</p> <p>21 Summit and Cuyahoga County that are</p> <p>22 actually prescribing suspiciously? That is</p> <p>23 not what you mean to suggest here, correct?</p> <p>24 A. Correct. What I mean to say is</p> <p>25 that they were -- they tripped one of the</p>
<p style="text-align: right;">Page 111</p> <p>1</p> <p>2 triple national average, from McKesson</p> <p>3 8,000, and from common sense.</p> <p>4 Each of these metrics generates a</p> <p>5 different number of flags, right?</p> <p>6 A. Correct.</p> <p>7 Q. You do not intend to offer any</p> <p>8 opinion in this case as to which one of</p> <p>9 these is right. I think you've told us</p> <p>10 that, correct?</p> <p>11 A. Right.</p> <p>12 Q. And relatedly, you don't intend</p> <p>13 to offer any opinion that any particular</p> <p>14 set of these prescriptions are suspicious</p> <p>15 prescribing as the DEA would define it?</p> <p>16 That is not what you're here to do,</p> <p>17 correct?</p> <p>18 A. Correct. Whenever we use the</p> <p>19 word "suspicious," we mean that it tripped</p> <p>20 one of the metrics.</p> <p>21 Q. When you use the term</p> <p>22 "suspicious," you mean flagged by your</p> <p>23 metrics?</p> <p>24 A. That's precisely what we mean.</p> <p>25 Q. And that is all that you mean by</p>	<p style="text-align: right;">Page 113</p> <p>1</p> <p>2 compliance metrics.</p> <p>3 Q. Okay. And in figure 2, figure 2</p> <p>4 reflects what the dosage unit numbers look</p> <p>5 like between some really tiny colorful</p> <p>6 chart on the bottom left-hand side.</p> <p>7 I think the orange chart at the</p> <p>8 top is the dosage units reflected by any</p> <p>9 flagged prescription of any of your</p> <p>10 compliance metrics.</p> <p>11 You see the orange one on top?</p> <p>12 A. It's black and white, but...</p> <p>13 Q. Oh, I'm sorry about that. You</p> <p>14 see the line at the top?</p> <p>15 A. I think it is orange. The top</p> <p>16 one mathematically should be any metric.</p> <p>17 Q. Okay. And, again, when we're</p> <p>18 looking at these, this is not information</p> <p>19 that you are suggesting that the labelers</p> <p>20 actually had, correct?</p> <p>21 A. Yes. I'm saying that they could</p> <p>22 have had.</p> <p>23 Q. Could have had.</p> <p>24 And this is not -- you're not</p> <p>25 opining on anything that the labelers could</p>

<p style="text-align: right;">Page 114</p> <p>1</p> <p>2 have or should have done with this data?</p> <p>3 That is not what you're offering here?</p> <p>4 A. It's a little confusing. The</p> <p>5 whole analysis is if they had applied, this</p> <p>6 would be the results.</p> <p>7 But I am not saying that they</p> <p>8 should have. That would not be my expert</p> <p>9 opinion.</p> <p>10 Q. Okay. And you say in paragraph</p> <p>11 82 that you've done a diligent search and</p> <p>12 you haven't seen any labelers reporting any</p> <p>13 of these physicians to law enforcement.</p> <p>14 Do you see where it says that in</p> <p>15 82?</p> <p>16 A. Correct. I do see that.</p> <p>17 Q. My question is: What was the</p> <p>18 diligent search that you describe there?</p> <p>19 A. So we were reviewing --</p> <p>20 specifically, especially for the examples</p> <p>21 in the report, searching for their names,</p> <p>22 for documents within the production for</p> <p>23 those names would be one example of how we</p> <p>24 did that search.</p> <p>25 Q. Flip with me to page 32 of your</p>	<p style="text-align: right;">Page 116</p> <p>1</p> <p>2 don't know that one way or the other?</p> <p>3 A. I would say I don't know that one</p> <p>4 way or the other.</p> <p>5 Q. Okay. And you don't know if</p> <p>6 authorities actually investigated these</p> <p>7 guys? That is beyond what you would know,</p> <p>8 correct?</p> <p>9 MS. CONROY: Objection.</p> <p>10 A. To the extent that there isn't</p> <p>11 news articles. I mean, I think I do cite</p> <p>12 some news articles about some of these</p> <p>13 doctors, so I would assume an arrest -- or</p> <p>14 there was an investigation leading to an</p> <p>15 arrest.</p> <p>16 Q. Other than the public</p> <p>17 information, you don't have any knowledge</p> <p>18 about investigations that might or might</p> <p>19 not have gone on about these physicians,</p> <p>20 correct?</p> <p>21 A. Correct.</p> <p>22 Q. And you did not take a look at</p> <p>23 what proportion of these doctors'</p> <p>24 prescriptions were lawful versus unlawful?</p> <p>25 That is not something that you were asked</p>
<p style="text-align: right;">Page 115</p> <p>1</p> <p>2 report, table 11.</p> <p>3 A. Yup.</p> <p>4 Q. In your prior answer when you say</p> <p>5 "those names," you're referring to the</p> <p>6 physicians that are listed in table 11,</p> <p>7 right?</p> <p>8 A. The physicians in table 11, as</p> <p>9 well as any exemplar physicians in the</p> <p>10 report. I think Yang is the only one</p> <p>11 that's not part of table 11.</p> <p>12 Q. Why is he not in table 11?</p> <p>13 A. So from what I -- so table --</p> <p>14 this is very confusing for people and I</p> <p>15 apologize.</p> <p>16 These -- the intention of table</p> <p>17 11 was to identify the physicians that</p> <p>18 labelers had documented somewhere that were</p> <p>19 suspicious. They said either for Purdue,</p> <p>20 for example, that would be your do-not-call</p> <p>21 list regency rule. I could not find Yang</p> <p>22 on those documents.</p> <p>23 Q. But you don't know, as you sit</p> <p>24 here today, whether these doctors were</p> <p>25 actually reported to authorities? You</p>	<p style="text-align: right;">Page 117</p> <p>1</p> <p>2 to do here?</p> <p>3 A. Correct. I would not know what</p> <p>4 was lawful versus unlawful.</p> <p>5 Q. Okay. And did you talk to</p> <p>6 anybody at DEA and ask if these doctors</p> <p>7 ever were on DEA's radar screen or what</p> <p>8 they knew about these doctors and when?</p> <p>9 A. No. Like I said earlier, the</p> <p>10 only contact I've had with the DEA is just</p> <p>11 to talk about our ARCOS data process.</p> <p>12 Q. And turning to page 33 of your</p> <p>13 report, figure 3, for one of those</p> <p>14 prescribers, this is an illustration of</p> <p>15 Dr. Sinoff's dosage units compared to other</p> <p>16 physicians in his specialty between '97 and</p> <p>17 2017.</p> <p>18 Is that what this chart reflects?</p> <p>19 A. Yes.</p> <p>20 Q. The limit of your opinion is: If</p> <p>21 the metrics I employed had been used, this</p> <p>22 is what they would show, correct?</p> <p>23 A. I would say that there were -- to</p> <p>24 make this graph "no metrics needed to be</p> <p>25 applied," I just graphed the IQVIA data for</p>

<p style="text-align: right;">Page 118</p> <p>1 2 this prescriber. 3 Q. Well, you had to figure out a 4 national average, you had to figure out 5 what specialty, isolate the specialty, 6 create an average, and then run the metric, 7 right? 8 A. Yes, I did have to calculate an 9 average for that specialty for that year. 10 But then as far as flagging, that would be 11 recorded in a separate table. 12 Q. Looking at figure 3, you're not 13 going to offer any opinions as to, you 14 know, whether a labeler should have sliced 15 the data or looked at the data this way? 16 The "should have done" or 17 "required to do" is beyond your opinion, 18 correct? 19 A. Correct. 20 Q. You are not intending to offer 21 any opinions as to what point in the 22 timeline reflected in figure 3 a labeler 23 might have a reporting duty with respect to 24 this doctor, correct? 25 That's beyond the scope of what</p>	<p style="text-align: right;">Page 120</p> <p>1 2 doctors that are analyzed in pages 32 3 through 52 of your report, again, your 4 opinions offered at trial will be limited 5 to this is what the data could have shown, 6 but you do not intend to offer any opinions 7 as to what should have been done, what was 8 required to be done, or what would have 9 happened in the real world had an action 10 been taken, correct? 11 A. That's correct. 12 Q. Okay. Page 54 of your report in 13 paragraph 115 -- sorry. Let me back up. 14 Page 53 gives us the heading 15 "Small Labeler Impact." 16 We talked a little bit about this 17 analysis before the break, correct? 18 A. Correct. 19 Q. I believe you agreed with me that 20 the small labeler impact analysis is 21 hypothetical only, correct? 22 A. Yes, hypothetical only. 23 Q. You do not intend to offer any 24 opinions that this analysis should have 25 been done by Janssen or anyone else,</p>
<p style="text-align: right;">Page 119</p> <p>1 2 you have expertise to do? 3 A. Correct. 4 Q. You don't intend to offer any 5 opinions as to what might have happened if 6 someone reported Dr. Sinoff to someone 7 else, what might have happened in the real 8 world if that had happened? That is beyond 9 what you will offer in this case, correct? 10 A. Correct. 11 Q. Somewhere in the report you 12 conclude by using a phrase "that orders 13 might have been stopped." 14 You haven't looked at and you 15 don't know the process by which orders get 16 stopped, do you? 17 A. Not thoroughly, no. 18 Q. Okay. And you don't have the 19 expertise to offer opinions about how a 20 distributor or a manufacturer or a pharmacy 21 would stop an order? That is not -- that 22 is beyond the limits of your expertise, 23 correct? 24 A. Correct. 25 Q. Okay. And for each of the</p>	<p style="text-align: right;">Page 121</p> <p>1 2 correct? 3 A. Correct. 4 Q. You have no idea how many opioids 5 went into Cuyahoga and Summit County, how 6 many of those opioids were excessive versus 7 medically necessary? You have no idea of 8 that, do you? 9 A. That's outside of my expertise, 10 correct. 11 Q. Okay. And you do not intend to 12 offer any opinions in this case that the 13 actions of any manufacturer would have or 14 could have prevented excess orders into 15 Cuyahoga and Summit County? That is beyond 16 your expertise? 17 MS. CONROY: Objection. 18 A. Sorry, I think so, yes. I would 19 say throughout the report, we say if they 20 had used the compliance metrics, they could 21 have been identified, but nothing about 22 should. 23 Q. And when you say "could have had 24 a curtailing affect on the excess of 25 opioids prescribed in the counties," do you</p>



<p style="text-align: right;">Page 122</p> <p>1</p> <p>2 see where it says that in 115?</p> <p>3 A. Yes, I'm there.</p> <p>4 Q. That is hypothetical only. You</p> <p>5 do not know whether there was, in fact, an</p> <p>6 excess of opioids or to what extent the</p> <p>7 opioids in Cuyahoga or Summit County were</p> <p>8 excessive? That is not something you know,</p> <p>9 correct?</p> <p>10 MS. CONROY: Objection.</p> <p>11 A. Correct.</p> <p>12 Q. And you don't know and it would</p> <p>13 be outside of your expertise to know how or</p> <p>14 whether Janssen's actions could have</p> <p>15 curtailed that and to what extent excessive</p> <p>16 prescribing could have been curtailed?</p> <p>17 That is outside of what you've been asked</p> <p>18 to do here, correct?</p> <p>19 MS. CONROY: Objection.</p> <p>20 A. Outside of what we've offered</p> <p>21 here of the hypothetical situation of what</p> <p>22 the impact on the prescriptions would have</p> <p>23 been, then no.</p> <p>24 Q. Okay. Page 56 and 57 talk about</p> <p>25 a baseline year analysis.</p>	<p style="text-align: right;">Page 124</p> <p>1</p> <p>2 hypothetical situation.</p> <p>3 Q. It's just another option to show</p> <p>4 the data, correct?</p> <p>5 A. That's a great way to say it.</p> <p>6 Q. And then in table 30, table 30</p> <p>7 shows the additional physicians that would</p> <p>8 have been flagged if you used '97 as the</p> <p>9 baseline; is that right?</p> <p>10 A. Correct.</p> <p>11 Q. And under the, air quote, "common</p> <p>12 sense" metric, if you used the '97</p> <p>13 baseline, you would have gotten 8,736 more</p> <p>14 physicians flagged than if you used the</p> <p>15 year-over-year metrics, right?</p> <p>16 A. Yes.</p> <p>17 Q. You have no opinion on whether</p> <p>18 there were really 8,700 suspicious</p> <p>19 prescribers in Cuyahoga and Summit County?</p> <p>20 You have no opinion whatsoever on that, do</p> <p>21 you?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. Part 2 of your report is</p> <p>24 Manufacturer to Pharmacy Analysis.</p> <p>25 And this analysis uses chargeback</p>
<p style="text-align: right;">Page 123</p> <p>1</p> <p>2 Are you with me?</p> <p>3 A. Yes.</p> <p>4 Q. I am not data scientist, so let</p> <p>5 me say that. I'm just a lawyer. But I</p> <p>6 understand this analysis to be a</p> <p>7 supplemental analysis that looks at what</p> <p>8 would have been the change to certain of</p> <p>9 your metrics if you had used 1997 as a</p> <p>10 baseline year as opposed to using the</p> <p>11 year-over-year actual averages.</p> <p>12 Is that a fair simplification?</p> <p>13 A. That is a fair simplification.</p> <p>14 Q. Okay. And what you conclude</p> <p>15 about that is reflected in tables 30</p> <p>16 through 32 on page 57, correct?</p> <p>17 A. Yes.</p> <p>18 Q. You do not have any opinion as to</p> <p>19 whether it's more appropriate to use '97 at</p> <p>20 a baseline year or to use the</p> <p>21 year-over-year averages that are reflected</p> <p>22 elsewhere in your report.</p> <p>23 You are not taking a position on</p> <p>24 that, correct?</p> <p>25 A. Correct. It's another</p>	<p style="text-align: right;">Page 125</p> <p>1</p> <p>2 data as opposed to IQVIA data, correct?</p> <p>3 A. Correct.</p> <p>4 Q. We talked about this before the</p> <p>5 break, but you were provided a gigantic</p> <p>6 chargeback data file, correct?</p> <p>7 A. That is not a full</p> <p>8 representation.</p> <p>9 Q. Okay. Sorry. Let me get in your</p> <p>10 words.</p> <p>11 What did you have with respect to</p> <p>12 chargeback data?</p> <p>13 A. I have thousands of chargeback</p> <p>14 files that were produced by defendants. So</p> <p>15 those are, the Bates for those are in my</p> <p>16 report somewhere. And so to create the</p> <p>17 massive chargeback file that you're looking</p> <p>18 at that you tried to print out, which</p> <p>19 probably broke your whole computer, was an</p> <p>20 amalgamation of those data sets to make</p> <p>21 them processable.</p> <p>22 Q. And, again, this data science is</p> <p>23 too hard for me, but to the extent that my</p> <p>24 lawyer brain can understand it, what I</p> <p>25 believe you did was you put all of those</p>



<p style="text-align: right;">Page 126</p> <p>1 2 different kinds of files that you received 3 from different productions of labelers into 4 a chargeback file, and then you ran the 5 metrics in various ways and created a file 6 that's called chargeback_flagging that's 7 giant in itself and shows you the times 8 that the flags hit based on each of the 9 metrics you ran. 10 Is that essentially what you did 11 in your analysis? 12 A. Yes. So the process -- and I 13 actually wrote the chargebacks scripts, so 14 I can talk a lot about it. And so what it 15 does, for some labelers, we had like two 16 files. Mallinckrodt produced two. Those 17 were just stacked on top of one another and 18 put into the table. 19 Some had literally thousands of 20 files that had to be appended onto one 21 another because they were chunked in such a 22 way to make them smaller, maybe more 23 manageable for processing. I don't know 24 the reasons behind that production. So 25 those, again, were stacked on top of one</p>	<p style="text-align: right;">Page 128</p> <p>1 2 A. That's the part they don't ever 3 tell anybody. That is kind of the un-sexy 4 part of the job is cleaning the data and 5 putting it together. 6 Q. Okay. Looking at page 58 of your 7 report, part L is where you describe the 8 results of the analysis that you ran, 9 right? 10 And if I understand the process, 11 you made the data, and it seems like it 12 wasn't easy, but you made the data usable 13 and then you ran your metrics over it. And 14 what is presented in the analysis, similar 15 to what we talked about earlier, is what 16 the results would be if these metrics were 17 run, what your metric show. 18 Do I have that right? 19 A. Yes, I would say the data wasn't 20 unusable, so I don't want to characterize 21 it that way, but we made it that an 22 easy-to-flag format. And, yes, we applied 23 the metrics and here's what the results 24 were. 25 Q. And, again, like the other</p>
<p style="text-align: right;">Page 127</p> <p>1 2 another. 3 And then relevant fields moved 4 over into the main chargeback table. So 5 relevant fields would be date, who they 6 went to, DEA numbers if they were there, so 7 on and so forth. 8 Q. And you had the buyer county, so 9 you could look at it -- you could look at 10 the flags and your metrics specific to 11 Cuyahoga and Summit County, correct? 12 A. Yes. So if the county wasn't 13 provided in the data, some had it, some did 14 not, we would find that county, either 15 using ZIP code, buyer DEA, registrant 16 information. From the ARCOS data, that 17 would be another touch point for the ARCOS 18 data. Or through just geolocation, which 19 would be like a lat/long, latitude and 20 longitudinal. 21 Q. Part of what a data scientist 22 does and part of what's reflected in your 23 invoices is, as I understand it, actually 24 making the data usable so you can analyze 25 it, right?</p>	<p style="text-align: right;">Page 129</p> <p>1 2 analyses we've talked about, you do not 3 intend to offer any opinions that any 4 labeler should have done this; is that 5 right? 6 A. Correct. It's a -- 7 Q. You have no opinions as to 8 whether there was any requirement by any 9 defendant in this case to do analyses like 10 you have done here, correct? 11 A. Correct. 12 Q. Okay. What your part L of your 13 report shows us is merely if the data is 14 looked at in this way, here's what it would 15 show. 16 Do I have that right? 17 A. I think that is a nice 18 representation. 19 Q. Okay. Paragraph 125 refers to 20 chargebacks as a -- let me strike that. 21 Do you see paragraph 125 of your 22 report on page 58? 23 A. I am there. 24 Q. Okay. In the third sentence 25 there, you say, "For Mallinckrodt, between</p>

Page 130

1  
2 2009 and 2012, 96 percent of oxycodone  
3 orders and 98 percent of oxycodone 30  
4 orders were subject to chargeback request  
5 and hence would be in the chargeback data."  
6 And then you have a footnote  
7 there.  
8 Do you see that?  
9 A. Yes.  
10 Q. And then you go on to say, "In  
11 2017, Teva stated that about 51 percent of  
12 controlled substance transactions resulted  
13 in a chargeback."  
14 And then you have a cite there.  
15 Is that correct?  
16 A. Yes.  
17 Q. Do you see that?  
18 Okay. The only information that  
19 you rely upon to know the percentages of  
20 how many of Mallinckrodt and Teva's sales  
21 were subject to chargebacks is reflected in  
22 those two footnotes in the reliance  
23 materials you looked at that's cited there,  
24 right?  
25 A. Yes.

Page 131

1  
2 Q. And you don't know more broadly  
3 if those percentages could be expanded over  
4 different years for different products?  
5 That's beyond what you looked at?  
6 A. That's correct.  
7 Q. Okay. And just in general, from  
8 a data perspective, using like the higher  
9 the percentage of orders that are subject  
10 to a chargeback, the more useful that tool  
11 would be, correct?  
12 MS. CONROY: Objection.  
13 A. I wouldn't say useful. It would  
14 just provide more data on which to flag.  
15 Q. And that's what I wanted to  
16 check. Because in that next sentence in  
17 paragraph 125, you say, "Even with only  
18 partial coverage of downstream customer  
19 purchases, chargebacks were a useful tool  
20 in monitoring suspicious transactions at  
21 the pharmacy level from a manufacturer's  
22 perspective."  
23 Do you see where I read that?  
24 A. I do.  
25 Q. Okay. And the extent to which

Page 132

1  
2 monitoring chargebacks could be a useful  
3 tool varies depending on how many  
4 chargebacks there are, right?  
5 A. I don't want to speak to its  
6 usefulness, but I would say the more data  
7 you have, the more of a complete picture  
8 you have.  
9 Q. If you have one order, two  
10 orders, you can't use that to analyze  
11 chargebacks, correct?  
12 A. Of course --  
13 MS. CONROY: Objection.  
14 A. -- in this hypothetical, yes, if  
15 you had two, that's a pretty difficult --  
16 Q. Too small to analyze?  
17 A. Yeah.  
18 Q. So when you say here -- is there  
19 a threshold number beyond which I would not  
20 consider that data really useful to me?  
21 A. No. I don't have a hard  
22 threshold that I would set, no.  
23 Q. In looking at table 34 on page  
24 59, in the left-hand column we have the  
25 parent companies.

Page 133

1  
2 Are you with me?  
3 A. Yup. Sorry.  
4 Q. The next column says Labeler  
5 Names, and that shows what companies you  
6 aggregated into the parent company.  
7 Am I right about that?  
8 A. Yes.  
9 And I think throughout this  
10 section we keep things -- keep companies  
11 generally separated based off the  
12 productions.  
13 Q. Exactly where I was going.  
14 So here, I represent Allergan,  
15 and so I'll just look at Allergan, for  
16 example.  
17 Here, you break out Allergan from  
18 Teva in the chargeback analysis, right?  
19 A. Correct. Because of the  
20 different productions.  
21 Q. The data that is reflected in  
22 table 34, this shows nationwide data. This  
23 is not limited to Cuyahoga and Summit  
24 County, right?  
25 A. I honestly don't remember. I'd

Page 134

1  
2 have to consult the code that pulled that  
3 table to be for certain.  
4 Q. Okay. You don't know one way or  
5 the other as you sit here whether this  
6 is -- the number of chargebacks in the  
7 right-hand column, so the 7,519,723 for  
8 Endo, is that total number of chargebacks  
9 or is that in Cuyahoga and Summit County or  
10 you don't know?  
11 A. I'd have to check the code. I'm  
12 really sorry. Usually I put in the paren  
13 what it is, and this one slipped by me.  
14 Q. So I'll represent to you -- I  
15 don't mean this to be a trick. I will  
16 represent to you that from our analysis of  
17 your data, this appears to be the  
18 nationwide chargeback data.  
19 A. Okay.  
20 Q. And so for Cuyahoga -- do you  
21 know how many counties are in the United  
22 States, roughly?  
23 A. Well, over 3,000.  
24 Q. And so for each county, for  
25 example Allergan, do you see there that it

Page 135

1  
2 says 13,986 total chargebacks in the data?  
3 That do you understand that to be  
4 the total number of chargebacks that you  
5 found in the Allergan data?  
6 A. Yes, after processing, yes.  
7 Q. And then -- and that's 16 years  
8 of data, right?  
9 A. Yes.  
10 Q. And if you divide that by 3,000  
11 counties, you only have a, on average,  
12 couple chargebacks per county, right?  
13 A. Sure. I don't want to do mental  
14 math on camera, but sure.  
15 Q. I won't make you, I won't make  
16 you commit to actual numbers, but I think  
17 you get my point.  
18 For -- I assume you're not going  
19 to offer the opinion that analyzing a  
20 handful of chargebacks less than a dozen  
21 over a 20-year time period would be a  
22 useful tool for suspicious order  
23 monitoring.  
24 You would agree with me that it  
25 would not in fact be a useful tool for that

Page 136

1  
2 based on a matter of data, correct?  
3 MS. CONROY: Objection.  
4 A. Let me think about this a little  
5 bit. I think it really depends on the data  
6 and...  
7 Q. So I'm going to mark as  
8 Exhibit 6, a very, very long piece of  
9 paper.  
10 (Keller Exhibit 6, Spreadsheet,  
11 not Bates-stamped, marked for  
12 identification, as of this date.)  
13 BY MS. LEVY:  
14 Q. I'm going to tell you what this  
15 is in a minute. But take a look at it and  
16 see if you recognize what this data is  
17 before I describe it to you.  
18 (Document review.)  
19 A. I do recognize it.  
20 Q. You do or don't?  
21 A. I do.  
22 Q. Okay. This is what we were  
23 talking about earlier, like, the ginormous  
24 amount of information in the file that you  
25 have.

Page 137

1  
2 If you look at the top left-hand  
3 corner, that says "chargeback\_flagging."  
4 Do you see that?  
5 A. Um-hmm.  
6 Q. Okay.  
7 MS. LEVY: [Directed to court  
8 reporter] What exhibit are we on, 6?  
9 THE REPORTER: (Nodding  
10 affirmatively.)  
11 BY MS. LEVY:  
12 Q. So the chargeback\_flagging file  
13 has a very long number of columns that go  
14 from left to right.  
15 Do you see that?  
16 A. Um-hmm.  
17 Q. And reflected in each of the  
18 columns are the metrics that you ran across  
19 the chargeback data and the flags that came  
20 up as a result; is that right?  
21 A. I think that's correct.  
22 Q. And so in other words, when I  
23 looked across all of this data, the only  
24 values in each of these columns are zero or  
25 1.

<p style="text-align: right;">Page 138</p> <p>1</p> <p>2 That's like a data science thing,</p> <p>3 yes?</p> <p>4 A. Yeah, flagged or not flagged,</p> <p>5 yeah. It's not meant to be a joke or</p> <p>6 anything.</p> <p>7 Q. We don't talk like that as</p> <p>8 lawyers, but I think how I interpret this</p> <p>9 data is, if there is a zero in the column,</p> <p>10 that means it did not trigger a flag under</p> <p>11 that particular metric. And if there is a</p> <p>12 1, this metric did trigger a flag.</p> <p>13 Is that correct?</p> <p>14 A. That's great.</p> <p>15 Q. Okay. And so if you look at, up</p> <p>16 here in the top left, "query," it says</p> <p>17 "from chargeback_flagging."</p> <p>18 That is, you understand, to be</p> <p>19 your chargeback flagging reliance file,</p> <p>20 correct?</p> <p>21 A. Yeah, the table name is familiar</p> <p>22 to me.</p> <p>23 Q. And where it says "Where labeler</p> <p>24 name equals Allergan and buyer_state equals</p> <p>25 Ohio and_county in Cuyahoga and Summit,"</p>	<p style="text-align: right;">Page 140</p> <p>1</p> <p>2 where you would say where two times the</p> <p>3 national average is equal to one or three</p> <p>4 times the national average is equal to one</p> <p>5 or so on and so forth.</p> <p>6 Q. But in Exhibit 6, each one of</p> <p>7 those queries appears separately from right</p> <p>8 to left.</p> <p>9 Do you see that?</p> <p>10 A. They're columns, not queries,</p> <p>11 but, sure.</p> <p>12 Q. Okay. So what this shows us is,</p> <p>13 there were a total of 15 chargebacks over</p> <p>14 this 20-year period for Allergan drugs,</p> <p>15 right?</p> <p>16 A. I'm not sure that that is correct</p> <p>17 because this appears to be an aggregation.</p> <p>18 Like I said, the chargeback flagging table</p> <p>19 is an aggregation of chargebacks, and I</p> <p>20 would have to look at this myself. A</p> <p>21 couple of them have 2s next to them so like</p> <p>22 at line 7, there is a value of 2. So this</p> <p>23 could be 15, 16, 17, 18.</p> <p>24 Q. So I apologize. And you have --</p> <p>25 I accept your correction.</p>
<p style="text-align: right;">Page 139</p> <p>1</p> <p>2 what does all that mean in data-speak?</p> <p>3 A. So this looks like a SQL query to</p> <p>4 me that's pulling from a schema name DBO to</p> <p>5 a chargeback flagging table, which is</p> <p>6 probably your renaming of our table, which</p> <p>7 is totally fine. And it's pulling data</p> <p>8 where it is Allergan as the labeler, where</p> <p>9 the state is Ohio, and Cuyahoga and Summit</p> <p>10 are the counties. So good job at SQL.</p> <p>11 Q. And is this the way you would</p> <p>12 query it if you want to see how many</p> <p>13 Allergan chargebacks got a flag in Cuyahoga</p> <p>14 and Summit County? Is that the methodology</p> <p>15 you'd use?</p> <p>16 A. I would take it one step further.</p> <p>17 If I wanted to look at those that were</p> <p>18 flagged for Allergan and Summit or</p> <p>19 Cuyahoga, I would say where one of these</p> <p>20 would be equal to 1.</p> <p>21 Q. So you would have to add up</p> <p>22 everything in this table that got a 1 and</p> <p>23 that's how you would know how many flags it</p> <p>24 got?</p> <p>25 A. Or a really massive "or" clause</p>	<p style="text-align: right;">Page 141</p> <p>1</p> <p>2 So in the first column to the</p> <p>3 right of the row number, we see total</p> <p>4 number of chargebacks, and there is a value</p> <p>5 of 1 listed for all of them except for row</p> <p>6 7, 13 and 15, and that has two chargebacks</p> <p>7 in each of those, correct?</p> <p>8 A. 7, 13 and 15, correct, have two</p> <p>9 chargebacks.</p> <p>10 Q. And so what that tells us is</p> <p>11 there were 18 chargebacks, not 15, but 18</p> <p>12 chargebacks over this 20-year time period</p> <p>13 for the Allergan labeler code, correct?</p> <p>14 A. That were submitted to us or that</p> <p>15 I had in the data set, yes.</p> <p>16 Q. Okay. And I'm going to pass over</p> <p>17 to you, just to make this easier and</p> <p>18 faster, my version of this.</p> <p>19 (Handing.)</p> <p>20 A. Do we need to mark this?</p> <p>21 Q. And I will represent to you that</p> <p>22 I have highlighted the three transactions</p> <p>23 or the three rows that reflect any flag</p> <p>24 from your metrics. So take a look at that</p> <p>25 and -- is yours highlighted too?</p>

Page 142

1  
2 A. Yes. Would you like this back?  
3 Q. Yes.  
4 (Handing.)  
5 Q. Thank you. This would make it  
6 easier.  
7 So what I've done in the  
8 highlighted -- we highlighted everything  
9 that had a flag.  
10 Do you see that?  
11 A. Yes, sorry. Yes.  
12 Q. And so what this shows us is that  
13 in the 20-year time period, you came up  
14 with or your data would reflect four  
15 chargebacks that would get a flag if you  
16 applied all of your metrics in total for  
17 Allergan.  
18 Do you see that?  
19 A. I'm trying to look at this  
20 without grids, but I'm going to take your  
21 word for it.  
22 (Document review.)  
23 A. But I see where you're flagging  
24 the 1s. And there are a line, and so that  
25 reflects that group of chargebacks to that

Page 143

1  
2 buyer ID.  
3 Q. And then if you just look at row  
4 11, for example, the total doses, what does  
5 total doses mean?  
6 A. So one could think of that as the  
7 number of pills it's like the dosage units.  
8 And so generally, that's a field in the  
9 data.  
10 Q. And if you look at the doses in  
11 row 11, that's 200 doses. And then right  
12 beside it, it says total MMEs is 2,000.  
13 Do you see that?  
14 A. Correct.  
15 Q. So it means 200 pills at 10  
16 milligrams a pill in that order, correct?  
17 A. Because it is hydrocodone, yes,  
18 you can do that math.  
19 Q. And so that reflects -- if you go  
20 over to data date, that reflects 9/1/2005,  
21 an order of 200 pills of 10-milligram  
22 hydrocodone for a chain pharmacy in Summit  
23 County, correct?  
24 A. Yes, it's a chargeback request  
25 for that. I wouldn't say it's an order.

Page 144

1  
2 Q. And my point from this data is --  
3 did you look at what product this is? You  
4 didn't go behind any of the flags and look  
5 for what product this is or how many  
6 prescriptions this would fill? That's not  
7 something you did, is it?  
8 A. So to the extent that we needed  
9 the product to get the MME conversion  
10 factor, I would have looked at that on the  
11 aggregate.  
12 To the extent that the product  
13 mattered for a particular flag, because I  
14 think some flags go to the NDC, I would  
15 have looked at that.  
16 For this specific order on this  
17 specific date to this specific buyer, I did  
18 not look at that particular NDC code.  
19 And to your second question, I  
20 did not, across the board, analyze how many  
21 prescriptions that would or should or could  
22 have filled.  
23 Q. Okay. And so I think just taking  
24 a step back, there comes a point when you  
25 have so little data that it is not useful

Page 145

1  
2 for using as an order for suspicion.  
3 Would you agree that that is true  
4 in the abstract?  
5 MS. CONROY: Objection.  
6 A. As like the example that you  
7 pointed out earlier, one or two, yes,  
8 unusable.  
9 Q. Okay. And in here, you do not  
10 intend to offer any opinions that a flag  
11 for a single order should have been labeled  
12 by Allergan as suspicious? That is beyond  
13 what your offering in this case, correct?  
14 MS. CONROY: Objection.  
15 A. Yes, because you used the word  
16 "should." No, I'm not.  
17 Q. Okay. Which of the orders that  
18 were subject to the chargebacks in  
19 Exhibit 6 are suspicious in your analysis?  
20 A. So I think that's what we were  
21 covering earlier. And for one, when I  
22 answer this question, when I say  
23 suspicious, they triggered the compliance  
24 metrics.  
25 So those would be this order here



Page 146

1  
2 on row 15. I'm taking your math for it,  
3 but it looks to be generally right. Row 11  
4 and row No. 4.  
5 Q. And you don't intend to offer any  
6 opinion that actually in the real world,  
7 these were suspicious orders or DEA would  
8 consider these suspicious orders, correct?  
9 A. Correct.  
10 Q. Okay. And the same analysis,  
11 this one in Exhibit 6 is unique to  
12 Allergan.  
13 Did you isolate for any other  
14 labeler the exact number of chargebacks in  
15 Cuyahoga and Summit County?  
16 A. Where we would, like, create a  
17 table like 34 for Summit and Cuyahoga, no.  
18 Q. Okay. Why didn't do you that?  
19 There are many other places in your report  
20 that you looked specifically at Cuyahoga  
21 and Summit County. Why did you not do that  
22 for purposes of table 34?  
23 A. Honestly, I have no idea, but  
24 it's easy to run and could be done no  
25 problem, and I'd be happy to do that for

Page 147

1  
2 you guys.  
3 Q. If you look at table 38 on page  
4 61, this gives you -- the table is called  
5 "Number of flagged buyers attributed to  
6 each labeler."  
7 Again this is on a national  
8 level, not Cuyahoga and Summit, right?  
9 A. I would think this would be  
10 Cuyahoga and Summit.  
11 Q. Do you know one way or the other?  
12 (Document review.)  
13 A. It should be Cuyahoga and Summit.  
14 Q. Okay. And the numbers for  
15 flagged buyers varied depending on which  
16 one of the metrics or matrices you run  
17 across table 38, right?  
18 A. Correct.  
19 Q. So if you run -- for Allergan, if  
20 you ran the double national metric, you  
21 would find one flagged buyer in Cuyahoga  
22 and Summit County? Is that what that  
23 means?  
24 A. Correct.  
25 Q. And you would find zero for some

Page 148

1  
2 of these and two they hit on any flag.  
3 Is that a correct reading of this  
4 table?  
5 A. Correct.  
6 Q. And again, I think you've now  
7 said this many, many times, but it's not --  
8 you do not intend to offer any opinion that  
9 these are, in fact, suspicious orders or  
10 suspicious purchases by buyers. That is  
11 beyond what you are able to do and beyond  
12 your expertise, correct?  
13 MS. CONROY: Objection.  
14 A. Correct.  
15 Q. And that's true for Allergan, but  
16 also all of the other labelers on the  
17 left-hand column?  
18 A. I would say so, yes.  
19 Q. Okay. And the same with table 39  
20 and the dosage units, I think generally the  
21 same thing applies.  
22 The number of flagged dosage unit  
23 changes, depending on which one of your  
24 metrics are applied, correct?  
25 A. Correct.

Page 149

1  
2 Q. And for Allergan specifically,  
3 where there's no value in a column, that  
4 means there's no flagged dosage units under  
5 that metric, right?  
6 A. Correct.  
7 Q. And then where there is a value  
8 for Allergan under these columns, that is  
9 the total amount of dosage units  
10 attributable to Allergan in this 20-year  
11 period that got a flag; is that right?  
12 A. Based on the data that we had  
13 available, yes.  
14 Q. And the dosage units are pills  
15 basically, correct?  
16 A. Correct.  
17 Q. So 200 pills in 20 years for  
18 Allergan under the "common sense, masters"  
19 column.  
20 Do you see that?  
21 A. Correct. I do see it. That  
22 should be the right answer, sorry.  
23 Q. Okay. And 200 pills, you don't  
24 have any idea how many prescriptions that  
25 would fill, right?

Page 150

1  
2 A. No.  
3 Q. It could be just one prescription  
4 or two prescriptions, right?  
5 MS. CONROY: Objection.  
6 A. I would have no idea.  
7 Q. Okay. And the same is true for  
8 all of the labelers listed in table 39, you  
9 don't have any opinion on whether the  
10 dosage units listed in these tables were  
11 actually suspicious or improper or not?  
12 You don't have any opinion on that, do you?  
13 A. That's correct.  
14 Q. Okay.  
15 MS. LEVY: Let's take a -- would  
16 you rather take a short break or break  
17 for lunch?  
18 MS. CONROY: Do you think the --  
19 well, isn't food there? Do you know?  
20 MS. VENTURA: Yes.  
21 MS. LEVY: There is. Are you  
22 hungry yet?  
23 THE WITNESS: Yes, always.  
24 MS. LEVY: Let's go off the  
25 record.

Page 151

1  
2 THE VIDEOGRAPHER: The time is  
3 12:05 p.m. We are now going off the  
4 record.  
5 (Recess is taken.)  
6  
7  
8  
9  
10  
11  
12  
13  
14  
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17  
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20  
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24  
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Page 152

1  
2  
3 AFTERNOON SESSION  
4 (Time noted: 1:06 p.m.)  
5 THE VIDEOGRAPHER: The time is  
6 1:06 p.m. We are back on the record.  
7 \* \* \*  
8 LACEY R. KELLER, resumed  
9 and testified as follows:  
10 EXAMINATION BY (Cont'd.)  
11 MS. LEVY:  
12 Q. Ms. Keller, I have a few more  
13 questions to ask you based on my review of  
14 the material at lunch and then I will pass  
15 you off to some of the other defendants'  
16 counsel in this room to ask questions. But  
17 I do have a few more things that I wanted  
18 to follow up on based on our conversation  
19 this morning and some other things that I  
20 had flagged in your report that I meant to  
21 ask you about --  
22 A. Sure.  
23 Q. -- and I have not yet done so.  
24 If we look at, back to your  
25 report marked I think as Exhibit 2 and we

Page 153

1  
2 look at paragraph 2 on page 9. I'm sorry,  
3 Exhibit 5.  
4 A. I'm sorry, we're at the report?  
5 Q. Yeah, your report on page 9,  
6 paragraph 22, that is under the heading  
7 "Scope of report."  
8 A. Sure.  
9 Q. You mention in the first sentence  
10 in paragraph 22 that your report "focuses  
11 specifically and exclusively on  
12 manufacturers' anti-diversion and  
13 suspicious order monitoring programs."  
14 Do you see that?  
15 A. Correct, I do see that.  
16 Q. Okay. I want to make sure that I  
17 understand the limitations of what you mean  
18 by that.  
19 When you talk about in that  
20 sentence in 22, focusing on manufacturers'  
21 suspicious order monitoring programs,  
22 you're referring to what we've already been  
23 talking about all day today, which is what  
24 might have been or could have been in a  
25 hypothetical world had your metrics been

Page 154

1  
2 employed, right?  
3 MS. CONROY: Objection.  
4 A. Yes, I think that's a correct  
5 characterization.  
6 Q. And your analysis does not  
7 include, for example, an analysis of  
8 Allergan and a look at every single order  
9 that it did investigate.  
10 You didn't conduct such an  
11 analysis for Allergan or any other labeler,  
12 correct?  
13 A. Let me think about that for a  
14 second just to make sure I'm clear.  
15 I was... I think that is correct.  
16 I didn't look at the practices, I didn't  
17 evaluate the practices of Allergan. I  
18 didn't look at how each process was -- how  
19 each order was processed, monitored,  
20 flagged, unflagged or released, et cetera.  
21 Q. And to be clear, you had some  
22 information about suspicious order  
23 monitoring programs for the various  
24 labelers. You had some information, but  
25 you didn't do an analysis of which ones of

Page 155

1  
2 the orders were investigated versus weren't  
3 investigated.  
4 That was beyond what you did,  
5 right?  
6 A. I think -- I think that's  
7 correct.  
8 Q. Yeah, I'm not trying to be  
9 tricky. I just want to make sure.  
10 You never looked at for any of  
11 the flags that came up for any of your  
12 metrics in the real world whether a labeler  
13 actually did investigate those particular  
14 transactions? That, you never looked at,  
15 right?  
16 MS. CONROY: Objection.  
17 A. I think that's correct. I did  
18 have access to the Mallinckrodt peculiar  
19 orders data, but I didn't go as far as  
20 beyond looking at that data set.  
21 Q. And so for the set of  
22 transactions that are flagged under  
23 different matrices, you can't say which  
24 ones of those actually got investigated,  
25 which ones didn't, which ones were

Page 156

1  
2 legitimate, which ones weren't legitimate?  
3 That is not something that you did in  
4 connection with your work in this case,  
5 right?  
6 A. Yes, I would not be able to state  
7 which ones were legitimate or not.  
8 Q. Okay. And the extension of that  
9 is, you have no opinion, you cannot opine  
10 on what the impact would have been if a  
11 labeler had investigated because you don't  
12 know what those investigations would have  
13 found, what would have happened after that,  
14 correct?  
15 A. Yes, I think we've covered this  
16 one earlier, but with the exception of the  
17 hypothetical Janssen analysis, that is a  
18 correct statement.  
19 Q. Okay. I forgot to talk to you  
20 about your addendum. You provided an  
21 addendum to your expert report.  
22 Do you know what I'm talking  
23 about when I say the addendum?  
24 A. Yes, I do.  
25 Q. So how did this addendum come

Page 157

1  
2 about? Tell me the story of the addendum.  
3 A. Yes. So --  
4 MS. CONROY: Is it marked?  
5 THE WITNESS: I don't know  
6 that --  
7 MS. CONROY: Can we just mark it?  
8 MS. VENTURA: Just a second.  
9 MS. LEVY: It's Tab 3 in my  
10 binder.  
11 Mark this as Exhibit 7.  
12 (Keller Exhibit 7, Expert  
13 Analysis - Addendum: Lacey R. Keller,  
14 marked for identification, as of this  
15 date.)  
16 BY MS. LEVY:  
17 Q. Exhibit 7 is your addendum,  
18 correct?  
19 A. Correct.  
20 Q. Okay. So what's the story as to  
21 how this came about?  
22 A. So one is a -- let me make sure  
23 I've got this all here.  
24 So one is the persistent flagging  
25 as I would say is similar to the

<p style="text-align: right;">Page 158</p> <p>1 methodology that was contained in McCann's</p> <p>2 report, so I wanted to enact this here just</p> <p>3 to see what would be the results of the</p> <p>4 data after reviewing his report, also a</p> <p>5 similar 12-month trailing average. And</p> <p>6 then the final metrics are the Purdue</p> <p>7 metrics that we became aware of at the last</p> <p>8 moment, right before filing, and did not</p> <p>9 have time to enact. So I wanted to have a</p> <p>10 chance to adopt it or implement the Purdue</p> <p>11 metrics because I thought it was important</p> <p>12 to do so.</p> <p>13 Q. Your original report was dated</p> <p>14 April 15th, correct?</p> <p>15 A. Correct.</p> <p>16 Q. This addendum, do you remember</p> <p>17 the date of it? I don't see it on here.</p> <p>18 A. I do not.</p> <p>19 Q. I'll represent to you that the</p> <p>20 addendum was submitted on May 11th.</p> <p>21 Does that sound about right to</p> <p>22 you?</p> <p>23 A. That seems generally correct.</p> <p>24 Q. Was there any reason that you</p> <p>25</p>	<p style="text-align: right;">Page 160</p> <p>1</p> <p>2 And the Purdue metrics that we</p> <p>3 found, like I said, we literally found them</p> <p>4 days before, and I just didn't feel that it</p> <p>5 was prudent to implement something that I</p> <p>6 found doing a document review.</p> <p>7 Q. You do not take an opinion in the</p> <p>8 addendum as to whether the persistent</p> <p>9 flagging approach makes any sense or not?</p> <p>10 That's outside the scope of your opinion,</p> <p>11 right?</p> <p>12 MS. CONROY: Objection.</p> <p>13 A. Yes, as with all the other</p> <p>14 metrics or approaches, I'm agnostic.</p> <p>15 Q. And did you ever ask DEA, does</p> <p>16 this make any sense to you, DEA to put a</p> <p>17 flag on and keep it for perpetuity? Did</p> <p>18 you ever ask that question of DEA?</p> <p>19 A. No. Like I said earlier, my only</p> <p>20 correspondence with the DEA has been over</p> <p>21 basic ARCOS processing.</p> <p>22 Q. Okay. And you don't intend to</p> <p>23 offer any position at trial as to whether</p> <p>24 it makes more sense to employ the</p> <p>25 persistent flagging approach or the</p>
<p style="text-align: right;">Page 159</p> <p>1 could not have done your persistent</p> <p>2 flagging analysis in advance of your</p> <p>3 April 15th report?</p> <p>4 A. Mostly just time.</p> <p>5 Q. What do you mean by that?</p> <p>6 A. Just ran out of time already</p> <p>7 preparing we had there, so it was a very</p> <p>8 natural place to just let's do what we have</p> <p>9 here and then we'll do that as a separate</p> <p>10 addendum.</p> <p>11 Q. And you didn't get any additional</p> <p>12 information between April 15th and May 11th</p> <p>13 that would have created that analysis?</p> <p>14 A. Correct.</p> <p>15 Q. You had the information all</p> <p>16 along, correct?</p> <p>17 A. Correct.</p> <p>18 Q. You just ran out of time to do it</p> <p>19 before April 15th?</p> <p>20 A. Correct. Because I believe the</p> <p>21 first McCann report uses the persistent</p> <p>22 flagging methodology that he had filed. So</p> <p>23 yes, we could have filed this with the</p> <p>24 April 15th. I just ran out of time.</p> <p>25</p>	<p style="text-align: right;">Page 161</p> <p>1</p> <p>2 continuous evaluation approach?</p> <p>3 A. Sure.</p> <p>4 If you want to -- what I think</p> <p>5 you're saying is one where we reset the</p> <p>6 flags every month or every X time period</p> <p>7 versus leaving the flag on once it's</p> <p>8 flagged? Yes, I have no opinion on</p> <p>9 whether -- on either -- sorry, I'm getting</p> <p>10 hung up on my words -- on whether each one</p> <p>11 is correct or not correct. We just</p> <p>12 implement them.</p> <p>13 Q. If we look at your addendum on</p> <p>14 page 9, table 1, and if we compare that</p> <p>15 side by side with, I think it's table 36 at</p> <p>16 page 34 in your report.</p> <p>17 (Document review.)</p> <p>18 A. I'm going to bet that you may</p> <p>19 want table 7.</p> <p>20 Q. Table 7 on page 29. These two</p> <p>21 reports or these two tables represent the</p> <p>22 results -- the composite results of this</p> <p>23 analysis under the two different</p> <p>24 approaches, correct?</p> <p>25 A. Correct.</p>

Page 162

1  
2 Q. And if you look at -- for these  
3 two analyses, you just picked four of the  
4 metrics. You didn't do them all.  
5 Do you see that?  
6 A. So it wasn't happenstance like  
7 cherry-picking or not. No, that wasn't the  
8 case.  
9 So with some of the metrics where  
10 they could have applied to IQVIA, I did.  
11 Where it came to the labeler's own metrics,  
12 it felt most appropriate to apply those  
13 only to the chargeback, their own data  
14 so...  
15 Q. And that was most appropriate  
16 because that's the data set that those  
17 metrics were designed to look at, right?  
18 A. Correct. In reading the metrics  
19 and the documentation behind them, it  
20 looked as if they were designed to apply to  
21 pharmacies or to sales data or to some sort  
22 of internally housed data set, so that was  
23 my intention, yes.  
24 Q. I was going to ask you about  
25 that. That's important to keep straight

Page 163

1  
2 because if you apply a metric that is  
3 designed to look at distributor orders, if  
4 you apply it to pharmacies, the results are  
5 going to be in some ways skewed, right,  
6 because the metric is not designed to apply  
7 to that kind of data? Is that what you're  
8 getting at?  
9 A. I would say it's more that I felt  
10 like it was most honest or most like in the  
11 truest sense of the metric to apply it to  
12 the data set that it was intended for. Not  
13 to mix distributor versus manufacturer  
14 metrics, but just to the data set that it  
15 was designed for.  
16 The larger ones, the double  
17 national, triple national, common sense,  
18 and McKesson, were kind of at a -- I viewed  
19 them as a different level as the  
20 manufacturer's own metrics. Because I  
21 don't know that, let's say, Purdue would  
22 know Mallinckrodt's metric. But these  
23 other metrics are like in a different  
24 realm, if you will, is because they were  
25 the result of an enforcement action or --

Page 164

1  
2 so to me, they got a different treatment  
3 among the data sets.  
4 Any metric could have been ran  
5 against all the data, and I could do that  
6 very easily for you and would be happy to,  
7 but it was my intention to try to keep  
8 things to their truest sense.  
9 Q. I think I understand what you're  
10 saying.  
11 You tried to apply the metric  
12 designed for that type of data to that type  
13 of data?  
14 A. That's a very nice way of saying  
15 it much more succinctly than I did.  
16 Q. And so for these four metrics,  
17 common sense, I'm using that term in air  
18 quotes for the video, air quote words for  
19 the transcript, the metric that is referred  
20 to, air quote, common sense, double  
21 national average, triple national average,  
22 and McKesson 8,000, those were the ones you  
23 picked to run over the IQVIA data for the  
24 tables that we see in table 1 of the  
25 addendum and table 7 of your original

Page 165

1  
2 report, right?  
3 A. Yes, those four metrics we ran on  
4 the IQVIA data, correct.  
5 Q. The results of the metrics change  
6 a little bit depending on whether you do  
7 the resetting flags or the persistent  
8 flagging, correct?  
9 A. Correct. As --  
10 Q. Go ahead. I didn't mean to cut  
11 you off. Go ahead and finish your answer.  
12 A. I was going to say, yes, it  
13 depends on what metric you're looking at  
14 there.  
15 Q. But if you look at column 1,  
16 "Defendant labeler flagged physicians,"  
17 that number actually doesn't change between  
18 the two analyses, right?  
19 A. Right. Because that one makes  
20 sense, right? Because once a foot position  
21 is flagged, at some point that is a 1 or a  
22 zero, so it doesn't really, it won't -- it  
23 doesn't change whether you leave that flag  
24 on or not.  
25 Q. A number of physicians get



Page 166

1  
2 flagged in these counties varies wildly  
3 depending on which metrics you use, right?  
4 A. Yes. Like you can see here  
5 anywhere between 1 and 75 percent.  
6 Q. And you take no position as to  
7 which one is right or which one is closest  
8 to right, do you?  
9 A. That would be correct.  
10 Q. But it doesn't make much sense as  
11 a matter of common sense that 8 out of 10  
12 physicians in these counties are  
13 prescribing suspiciously.  
14 That is not what you mean to  
15 suggest with this analysis, correct?  
16 MS. CONROY: Objection.  
17 A. So I'm going to break that into  
18 two pieces.  
19 One, I'm making no assessment of  
20 the real world of who is suspicious or not.  
21 I will say with physicians, with that count  
22 of physicians specifically, if you get  
23 flagged once, and I think we say this in  
24 the report, if you get flagged once or you  
25 get flagged hundreds of times for every

Page 167

1  
2 month that you've ever prescribed, you're  
3 still counted the same.  
4 So that's why that number looks  
5 as it does compared to the prescriptions.  
6 Q. The number is -- the percentage  
7 of physicians is grossly larger than the  
8 percentage of physicians in the real world  
9 that actually prescribe suspiciously. It's  
10 not meant to represent that, right?  
11 MS. CONROY: Objection.  
12 A. I wouldn't know.  
13 Q. Okay. I mean, you could design a  
14 metric that uses a parameter that all  
15 opioids are suspicious and 100 percent of  
16 prescribers who prescribe them should be  
17 suspicious. You can define it that way and  
18 get 100 percent suspicious under some  
19 metric, right? That's something you could  
20 do if you used the right definition?  
21 A. I would say that would be  
22 something that someone could do. I don't  
23 know that I would do it, but that could be  
24 done if asked of someone.  
25 Q. It would not be useful to

Page 168

1  
2 describe a metric so comprehensive that it  
3 captured 100 percent of the prescribers in  
4 a jurisdiction? That would not be a useful  
5 thing to do, would it?  
6 A. I would say, you know, I'm not --  
7 I don't want to weed into or wade into  
8 evaluating metrics, so I'm not really going  
9 to pontificate on that.  
10 Q. Well, if we take a step back to  
11 what you do as a data scientist to generate  
12 leads, if you create a metric that captures  
13 everybody who is doing something, that  
14 doesn't generate any leads for you, does  
15 it?  
16 A. Or it generates all the leads  
17 but --  
18 Q. It generates the lead of  
19 everybody in the whole --  
20 A. -- it doesn't prioritize them.  
21 Q. Right.  
22 So when you're looking to create  
23 sensible useful metrics, the ideal way to  
24 do so is to create metrics that come up  
25 with, as close as you can, to the actual

Page 169

1  
2 behavior you're trying to analyze, correct?  
3 MS. CONROY: Objection.  
4 A. I'm not really in a position to  
5 evaluate metrics. I think we've talked  
6 about that earlier. So I don't really want  
7 to wade into that.  
8 Q. Well, I understand that you're  
9 not offering any opinions about  
10 specifically in this case what the metrics  
11 should be or shouldn't be. I understand  
12 that and you've testified a great deal  
13 about that.  
14 But stepping back, like for  
15 example, your other work in the New York  
16 Attorney General's Office, when you  
17 designed metrics to analyze data and target  
18 gun traffickers -- that was something that  
19 you did, right? When you're doing that,  
20 you're trying to design metrics that  
21 isolate the bad guys, right?  
22 MS. CONROY: Objection.  
23 A. Correct.  
24 Q. And the most -- you know, in the  
25 ideal world, what someone should do to try

Page 170

1  
2 to look for aberrant behavior is to create  
3 sets of metrics that get as close to as you  
4 can isolating the behavior that you're  
5 targeting? I mean, that's the goal in  
6 doing all this, yes?  
7 A. I would think from a logical  
8 perspective, that makes sense.  
9 Q. And metrics that are overly  
10 comprehensive that capture everybody or the  
11 vast majority of people doing something as  
12 opposed to just the bad guys, those are  
13 less helpful than more targeted metrics  
14 designed more closely to target bad  
15 behavior, as a conceptual matter that would  
16 be true, right?  
17 MS. CONROY: Objection.  
18 A. Yeah, I guess I don't -- I don't  
19 really...  
20 I think when you're looking for  
21 bad -- I think when's designing metrics,  
22 you have different goals in mind for  
23 whatever you're doing, right?  
24 For gun trafficking, for example,  
25 maybe I'm only looking for straw purchasers

Page 171

1  
2 or whatnot. That is a very unique fact  
3 pattern.  
4 I think by looping things into  
5 bad guys or good guys or suspicious  
6 activity or not, there is a lot that's  
7 packed into that that I don't really want  
8 to blanket state like a metric that should  
9 or shouldn't do anything when it comes to  
10 that.  
11 Q. I mean, if I'm a labeler and I  
12 design a metric that captures 80 percent of  
13 prescribers, that's not going to be very  
14 helpful to me, is it?  
15 MS. CONROY: Objection.  
16 A. I wouldn't know.  
17 Q. Page 13 of your original report,  
18 if you can flip with me to that.  
19 (Witness complies.)  
20 Q. I'm confused on where I want to  
21 look at. Just a minute.  
22 What is LRX data?  
23 A. So I haven't seen it, so I can't  
24 speak definitively. But what I have read,  
25 as I understand it to be longitudinal -- I

Page 172

1  
2 think that's what it stands for like  
3 longitudinal data from IQVIA that allows  
4 you to see a little bit more granular, a  
5 little bit more granularity about the -- I  
6 think it has patient, prescriber, pharmacy,  
7 like all of that in the data.  
8 And again, this is a little bit  
9 hearsay because I have never seen the data,  
10 so I can't speak to that definitively.  
11 Q. Okay. You don't know really know  
12 what it looks like because you've never  
13 seen it?  
14 A. Correct. I've seen references to  
15 it.  
16 Q. Looking at page 13 of your  
17 report, in paragraph 40, this is under  
18 limitations of your analyses, I assume,  
19 from what you just told me, that you did  
20 not do any analysis on LRX data if you  
21 haven't ever seen it?  
22 A. Correct, I did not do any  
23 analysis on LRX data. The only reason why  
24 I know it exists, I think, is from that --  
25 if that cite doesn't capture it, somewhere

Page 173

1  
2 I have a cite that would -- that -- where  
3 we know it exists.  
4 Q. And when you make the blanket  
5 statement in paragraph 40 about LRX data  
6 being used in investigations of suspicious  
7 prescribers and downstream customers, the  
8 only information you have about that is  
9 what is cited in footnote 10, correct?  
10 MS. CONROY: Objection.  
11 A. I'm sure there's more, but I  
12 believe so. And I can't recall which of  
13 those many cites for that paragraph are  
14 there, which has the reference to the LRX  
15 data, but...  
16 Q. You don't know which  
17 manufacturers had or didn't have it?  
18 A. I don't -- so I would know from  
19 the cite here who references that, but I  
20 did not, as we were discussing earlier, do  
21 a comprehensive review of who purchased or  
22 didn't purchase.  
23 Q. Or what time periods it might  
24 have been purchased or what portion of it  
25 might have been purchased, that's not an

Page 174

1  
2 analysis that you did?  
3 A. Correct. I did not look at who  
4 purchased, when, where, why or how LRX  
5 data.  
6 Q. And both with respect to LRX  
7 data, but also more broadly with respect to  
8 Xponent data and IQVIA data in general,  
9 there is no requirement that a manufacturer  
10 buy that data, right?  
11 A. I wouldn't be able to say that.  
12 Q. You don't know one way or the  
13 other?  
14 A. It's outside of my expertise.  
15 Q. Okay. IQVIA data, you're aware  
16 that the IQVIA data for a particular drug  
17 reflects the labeler that holds that drug  
18 today for the entirety of the IQVIA  
19 database? You're aware of that, right?  
20 A. So I would say what we understood  
21 based off the files that we received, we  
22 were given, maybe you can call it a control  
23 file, that had the keys to the codes of  
24 which labeler were what. We had asked  
25 repeatedly for historical versions of this

Page 175

1  
2 file so that we could identify the labeler  
3 historically. But, yes, I think that file  
4 was dated fairly recently.  
5 Q. You just said it a thousand times  
6 better than I could.  
7 You were unable to tell from the  
8 code that IQVIA provides how long a  
9 particular labeler had held that product?  
10 In other words, you couldn't tell who had  
11 the product historically, right?  
12 A. Correct, even though we had asked  
13 for historical versions of that file.  
14 Q. And so the limitations of that  
15 data would not allow you to separate out  
16 for Allergan a time period that it didn't  
17 have one of the products, that's not  
18 something you could do with the IQVIA data  
19 that you were given?  
20 A. Correct. If they were assigned  
21 whatever code they were in the control file  
22 that we were given as part of the Allergan  
23 production, then that's what was applied  
24 for the entire data set.  
25 Q. And so for Allergan and its

Page 176

1  
2 product, Kadian, for example, if IQVIA has  
3 Kadian under the Allergan labeler code  
4 today, your analysis would have Kadian as  
5 an Allergan product for the whole 20-year  
6 time period because you had no way to  
7 understand or take out any other time  
8 periods? Am I right about that?  
9 A. That's correct. We had asked for  
10 that file. It wasn't either available or  
11 producible, so, yes.  
12 Q. And if you came to understand  
13 that Allergan did not own Kadian for a  
14 portion of that time period, that would  
15 change your analysis, correct?  
16 A. Someone else would have been  
17 attributed that Kadian product in the data  
18 set. It's not to say that that point of  
19 data would drop out completely or anything  
20 like that. And it wouldn't change my  
21 fundamental findings of applying the  
22 compliance metrics. It might change a few  
23 numbers in the tables, what's attributed to  
24 Allergan or not, but I wouldn't say -- I  
25 wouldn't characterize that as changing my

Page 177

1  
2 analysis.  
3 Q. The flags would still be there,  
4 they would just be somebody's else's flags,  
5 not Allergan's, right?  
6 A. Depending on the purchasing  
7 history, but, yes.  
8 Q. Got it.  
9 And the same would be true for  
10 any other labeler who had historically  
11 changed possession of products over time,  
12 right?  
13 A. Correct, which is why we asked  
14 very hard to obtain that file.  
15 Q. And IQVIA could not provide it,  
16 could they?  
17 MS. CONROY: Objection.  
18 A. I don't know who it was asked of  
19 or where. I know I had requested it and  
20 was very firm in those requests. I don't  
21 know if it was requested of defense or by  
22 IQVIA directly. That's beyond me.  
23 Q. Because that was data that you  
24 really wanted to see and it would have been  
25 important for you to know, right?

Page 178

1  
2 MS. CONROY: Objection.  
3 A. Yes, it would -- you know, I want  
4 things to be most accurate and so I want --  
5 if I had historical knowledge I would have  
6 liked to have applied that, yes. But I  
7 don't -- I don't know that it -- like I  
8 said earlier, I don't know -- it doesn't  
9 fundamentally change the results.  
10 Q. It doesn't change the number of  
11 flags?  
12 A. I mean each flag depends on the  
13 purchasing history of a particular  
14 prescribing history, so it's a little bit  
15 more complicated than that, but the flags  
16 would still exist, but --  
17 Q. They'd be attributed to different  
18 defendants?  
19 A. Correct, with a big asterisk  
20 there.  
21 MS. LEVY: Okay. Let's mark this  
22 document as Exhibit 8.  
23 Do you have more copies of this,  
24 Jayne? These are the corrections you  
25 brought today.

Page 179

1  
2 MS. CONROY: We have a copy over  
3 here. I think I gave everybody --  
4 MS. LEVY: We passed them out.  
5 Okay. Let's mark this as Exhibit 8.  
6 I've got another one that I can ask  
7 about.  
8 (Keller Exhibit 8, "Corrections  
9 to Expert Analysis," prepared by Lacey  
10 R. Keller, not Bates-stamped, marked  
11 for identification, as of this date.)  
12 BY MS. LEVY:  
13 Q. Who created Exhibit 8?  
14 A. I did.  
15 Q. Did you use fancy data science or  
16 is it a plain old Excel or Word document?  
17 A. That is a plain old Word document  
18 that actually started with old chicken  
19 scratch of my reports. For nicety for you  
20 guys, I didn't hand you the chicken  
21 scratch.  
22 Q. How did Exhibit 8 come about?  
23 Like how, when, and why was it created?  
24 A. So I would say I compiled it, we  
25 compiled it last night to send to you just

Page 180

1  
2 to make sure that everything was nice and  
3 neat as opposed to, you know, all over my  
4 report here.  
5 I would say it's the culmination  
6 of, since I filed it, a review of the  
7 report trying to make things correct. I'm  
8 sure there is some typos and such, but  
9 these were substantive changes that I  
10 wanted to point out.  
11 Q. And are these changes that are  
12 reflected in the right-hand column, are  
13 these things that others pointed out to you  
14 or that you just discovered on your own the  
15 more you read it after the fact?  
16 A. Every single one of them, I  
17 discovered.  
18 Q. Okay. This is a classic woman  
19 second-guessing and second-guessing and  
20 second-guessing her own work.  
21 Okay. And so none of these were  
22 like the lawyers telling you to change it  
23 from something to another? These are just,  
24 these are just corrections you discovered  
25 you want to make on your own?

Page 181

1  
2 A. Correct.  
3 Q. And you said this was prepared  
4 last night.  
5 A. For production to you guys I  
6 think just to make today easier. I had  
7 them for quite some time and was putting  
8 them, but, yes, the document here.  
9 Q. I just want to run through this  
10 quickly.  
11 In paragraph 33, you say that  
12 "would" should be "could." And that  
13 relates to what we've already talked about  
14 today, is that you are not saying what  
15 would have happened, you're saying  
16 hypothetically what could happen, correct?  
17 A. Correct. You've made a lot of  
18 these quite easy to explain now.  
19 Q. In paragraph 86, the 7,000 to  
20 5,000, how did you discover that  
21 discrepancy?  
22 A. I went through after filing the  
23 report and, like you said, we always check  
24 and recheck our work, and I just -- I  
25 wanted to make sure that every number was

Page 182

1  
2 as right as I could make it. So that one,  
3 I just reran it and realized that there was  
4 a discrepancy there.  
5 Q. Okay. And the change in  
6 paragraph 125 for table 35, last column, it  
7 says the second, third and fourth "no"  
8 should be a "yes."  
9 So where you say "no, Endo did  
10 not use chargeback in SOM program," you  
11 mean -- so let me speak in a way that our  
12 court reporter can transcribe.  
13 Turning to table 35, on page 59  
14 of your report and looking at that in  
15 conjunction with Exhibit 8, your  
16 corrections, you note that in table 35, in  
17 the last column of that table, the second  
18 "no" should be a "yes"; is that right?  
19 A. Yes. So Endo's "no" in the "used  
20 chargeback in SOMS program" should be  
21 "yes," followed by "Par and Qualitest."  
22 And that's to jive with the  
23 language below.  
24 Q. Okay. The metrics that you've  
25 used, I'm getting to the end of my

Page 183

1  
2 questioning, the metrics that you've used  
3 in your report in its addendum, these  
4 metrics could have been used by others  
5 other than the defendants in this case,  
6 right?  
7 MS. CONROY: Objection.  
8 A. Because you used the word  
9 "could," I would say yes.  
10 Q. The DEA could have run these  
11 metrics had it chosen to do that, right?  
12 A. I would think so, yes.  
13 Q. Law enforcement of other types,  
14 other than DEA, could have run these  
15 metrics if they had chosen to do that?  
16 A. I would think so, yes.  
17 Q. Cuyahoga, Summit County could  
18 have run these metrics if their law  
19 enforcement wanted to run them? They could  
20 have done that?  
21 A. Correct. Anyone who had access  
22 to the data or had access to the metrics  
23 could run them.  
24 MS. LEVY: I'm going to mark the  
25 invoices.

Page 184

1  
2 A. Do me a favor and get your  
3 invoices, which I believe we marked  
4 previously as Exhibit 3.  
5 MS. LEVY: Did we mark the  
6 invoices?  
7 MS. CONROY: Yes.  
8 A. We did.  
9 MS. LEVY: Okay. We already have  
10 them marked as Exhibit 3.  
11 (Keller Exhibit 9, Word document  
12 prepared by Keller, not Bates-stamped,  
13 marked for identification, as of this  
14 date.)  
15 BY MS. LEVY:  
16 Q. I'm going to hand you Exhibit 9,  
17 and I will represent to you that Exhibit 9  
18 was created by asking data entry folks to  
19 put into a table the information that came  
20 from your invoices in Exhibit 3.  
21 You've never seen Exhibit 9  
22 before, correct?  
23 A. That is correct.  
24 Q. And this is something that we  
25 created, not something that came from you.

Page 185

1  
2 But do you recognize the content of the  
3 information generally? I'm not asking you  
4 to tell me whether it's correct or not, but  
5 do you recognize what the types of  
6 information in here are?  
7 A. Yes. The case names look similar  
8 to ones that are in the invoices.  
9 Q. Okay. And for purposes of these  
10 questions, I will ask you to accept that  
11 this is an accurate extraction from the  
12 invoices here, but I recognize that you  
13 just have to accept my assumption on that.  
14 I'm not asking you to compare thing by  
15 thing. But if you accept that assumption,  
16 then I'd like to go through and ask, just,  
17 you know, what do these descriptions mean.  
18 What does opioid DMA mean in the  
19 Project column on the first page of  
20 Exhibit 9?  
21 A. It means -- I mean, there's a  
22 number in front of it, which is some  
23 computer-generated case number by the  
24 OpenAir system.  
25 Opioid DMA is data mining



<p style="text-align: right;">Page 186</p> <p>1</p> <p>2 analytics.</p> <p>3 Q. Data mining?</p> <p>4 A. Analytics.</p> <p>5 Q. Analytics.</p> <p>6 A. So anywhere you see DMA, that's</p> <p>7 data mining analytics.</p> <p>8 Q. Got it.</p> <p>9 And there are four invoices that</p> <p>10 are dated May 31st, 2018.</p> <p>11 Do you see that --</p> <p>12 A. I think --</p> <p>13 Q. -- far left column.</p> <p>14 A. Yeah. It looks like the line</p> <p>15 items are entered, so just give me a</p> <p>16 second.</p> <p>17 Q. Oh, right.</p> <p>18 And these line items are all</p> <p>19 related to travel, correct?</p> <p>20 A. Can I move this? Sorry.</p> <p>21 (Document review.)</p> <p>22 A. So the first four appear to be</p> <p>23 line items for travel, yes.</p> <p>24 Q. And they reflect that there was a</p> <p>25 meeting on May 24th in D.C.?</p>	<p style="text-align: right;">Page 188</p> <p>1</p> <p>2 recall somebody being introduced as, hi,</p> <p>3 I'm so-and-so from the DEA.</p> <p>4 Q. Did you understand that meeting</p> <p>5 to be -- were there any other experts in</p> <p>6 the meeting aside from you?</p> <p>7 A. At that time, I wasn't even an</p> <p>8 expert, so I wouldn't have even known then</p> <p>9 who would have been an expert or was an</p> <p>10 expert.</p> <p>11 Q. What did you do at the meeting?</p> <p>12 A. So that was... if I recall, I</p> <p>13 think it was a preliminary meeting about</p> <p>14 the ARCOS data. I think we had just gotten</p> <p>15 maybe the first or second production about</p> <p>16 it and everyone kind of putting their heads</p> <p>17 together of what the heck is this and how</p> <p>18 do we use it.</p> <p>19 Q. I don't see a hotel, so I would</p> <p>20 assume that was just a single</p> <p>21 there-and-back meeting?</p> <p>22 A. Yeah, I specialize in those.</p> <p>23 Q. So do I.</p> <p>24 Okay. And then we see another</p> <p>25 set of line items underneath the travel</p>
<p style="text-align: right;">Page 187</p> <p>1</p> <p>2 A. Correct.</p> <p>3 Q. Who was that meeting with?</p> <p>4 A. I don't recall specifically who</p> <p>5 was in the room. I remember it was at -- I</p> <p>6 remember meeting like Paul Farrell and some</p> <p>7 attorneys. Linda Singer of course was</p> <p>8 there. And then there is a lot of faces I</p> <p>9 don't remember or know.</p> <p>10 Q. A lot of other people, but you</p> <p>11 don't know who?</p> <p>12 A. Correct. It was --</p> <p>13 Q. How many people were there for</p> <p>14 that meeting?</p> <p>15 A. Oh, I couldn't guess. It was a</p> <p>16 room smaller than this for sure.</p> <p>17 Q. Less people than in this room</p> <p>18 today?</p> <p>19 A. Maybe the same but in a much</p> <p>20 tighter quarters.</p> <p>21 Q. Was anyone from DEA at that</p> <p>22 meeting?</p> <p>23 A. Like I said, I don't know who was</p> <p>24 exactly in that meeting. I didn't -- we</p> <p>25 didn't do like a check-in, but I don't</p>	<p style="text-align: right;">Page 189</p> <p>1</p> <p>2 ones that are the next four entries in gray</p> <p>3 that are charges for data mining and</p> <p>4 analytics.</p> <p>5 Do you see that?</p> <p>6 A. Correct.</p> <p>7 Q. But the one right before we get</p> <p>8 to data mining and analytics says "air gap</p> <p>9 server for ARCOS."</p> <p>10 What is air gap server?</p> <p>11 A. So you'll see a couple charges</p> <p>12 throughout here that are just to charge for</p> <p>13 our server space.</p> <p>14 Q. Like the hosting fee?</p> <p>15 A. Exactly.</p> <p>16 Q. Because it's a ginormous amount</p> <p>17 of data?</p> <p>18 A. Yes. It doesn't just sit</p> <p>19 somewhere for free if you want it to be</p> <p>20 super secure.</p> <p>21 Q. And then data mining and</p> <p>22 analytics reflect various numbers of hours</p> <p>23 and various billing rates. One is \$250 an</p> <p>24 hour, one is 475 and one is 275.</p> <p>25 Do you see that?</p>

Page 190

1  
2 A. Yes.  
3 Q. 475 is you, correct?  
4 A. That is me.  
5 Q. You're the only person that bills  
6 at the 475 rate on these, on this matter?  
7 A. I believe so, yes.  
8 Q. Okay. So anywhere we see a 475,  
9 I can know that's work you did personally?  
10 A. Correct.  
11 Q. And those are your hours.  
12 And then what is the difference  
13 between the 250 and the 275, just out of  
14 curiosity?  
15 A. Our analysts are generally paid  
16 on the lower end of the scale. I don't  
17 know exactly the structure. The data  
18 scientists and the more senior staff, more  
19 senior than analysts, I should say, get  
20 paid at that 275.  
21 Q. It's like a sliding scale of  
22 seniority?  
23 A. Exactly.  
24 Q. What are "investigative services"  
25 that are reflected on 6/22/2018 invoice?

Page 191

1  
2 A. Yeah. So some of the earlier  
3 invoices when we were first setting up the  
4 firm, they just -- so the firm would bill  
5 everything as investigative services  
6 because it's all that they had and never  
7 bothered to change it to data mining and  
8 analytics. And you'll notice that that  
9 disappears after some point in time,  
10 probably in the fall where we open up the  
11 "own data mining" categories, because I  
12 wanted to have my own for tracking so...  
13 Q. So here, it looks like the  
14 opposite to me, because it starts out being  
15 described as "data mining and analytics" in  
16 5/31/2018, but then it changes to  
17 "investigative services" from their amount  
18 if you look down that. And sometimes it's  
19 called "U.S. jurisdiction."  
20 But I think the 5/31/18 is the  
21 last time we see "data mining and  
22 analytics." Am I right about that?  
23 A. I'd have to put them in order to  
24 look, but that's how the -- when I asked  
25 the billing team to put this together for

Page 192

1  
2 me, that's how it was described to me is at  
3 some point, the case was opened and called  
4 data -- investigative services and then at  
5 some point, it was data mining analytics.  
6 I recognize that there's these  
7 three here that say "data mining and  
8 analytics" instead of "investigative  
9 services," but, again, this is from the DMA  
10 side of things, not from the investigation  
11 side of things.  
12 Q. And is there any substantive  
13 difference in what the people are doing  
14 when it's described as data mining and  
15 analytics versus investigative services?  
16 A. When it's on this paper, no.  
17 Q. Okay. As opposed to what?  
18 A. If there were -- as we talked  
19 earlier, Gryphon has two lines of -- or  
20 multiple lines of business, and we  
21 discussed the investigative side and not if  
22 the -- I can't speak to what their stuff is  
23 billed as, for example.  
24 Q. Okay. And so all the entries  
25 that have the description "investigative

Page 193

1  
2 services," those are people that are doing  
3 work with the data sets that are described  
4 in your report?  
5 A. Correct, you could understand  
6 them to be that.  
7 Q. What is DMA methodology and data  
8 overlays, what does that mean? DMA  
9 methodology and data overlays at the bottom  
10 of the first page of this exhibit, what  
11 does that mean?  
12 A. So that's the case where we -- if  
13 there is not a specific jurisdiction to  
14 bill that case towards -- so you'll notice  
15 some of these are for Summit County,  
16 Cuyahoga. At some point, those become  
17 Bellwether, et cetera. Methodology and  
18 data overlays are the analysis and work  
19 that we do that could touch multiple  
20 jurisdictions, right? So like a great  
21 example is the ARCOS data. There's a good  
22 chunk of time that goes into understanding  
23 it, processing it, filtering it, making  
24 sure that you're looking at the right  
25 thing, because it's not an easy thing to

<p style="text-align: right;">Page 194</p> <p>1 2 just ingest.</p> <p>3 Q. So this, in the fourth column 4 where we're talking about in reference to, 5 that is how you know internally who pays 6 which part of the bills? That's what that 7 column is designed to help be used for? 8 Whether it should be allocated to Cuyahoga, 9 to Summit or is relevant to multiple 10 analyses?</p> <p>11 A. Yeah, I guess the invoice is 12 reflected as that. We actually view that 13 as the case title when we're billing 14 against it.</p> <p>15 Q. On the second page of Exhibit 9, 16 at the top, there is an entry in the 17 reference to column that says, "DMA Ohio 18 5."</p> <p>19 What's that mean?</p> <p>20 A. So there were five counties in 21 Ohio. Some of these are just shorthand, 22 you know, we just call them internally, not 23 thinking that they would ever been produced 24 as exhibits. There were five counties that 25 we were producing analysis on in Ohio, so</p>	<p style="text-align: right;">Page 196</p> <p>1 2 analysis in conjunction with this case?</p> <p>3 A. No.</p> <p>4 Q. Have you done any work for the 5 United States of America as opposed to the 6 Ohio counties in conjunction with this 7 matter?</p> <p>8 A. No.</p> <p>9 Q. Under the project name, which is 10 the third column, flipping through this 11 document to page 4 of Exhibit 9, at the 12 top, the first set of white ones, November 13 of 2018, they say "labeler flagging."</p> <p>14 What's labeler flagging?</p> <p>15 A. That's the -- that's an analysis 16 of flagging metrics similar to what's in 17 the report here to labelers' data.</p> <p>18 Q. Same question with "Bellwether 19 follow-up" at the bottom of the page, what 20 does that mean?</p> <p>21 A. So, one, I've been informed that 22 it's Bellwether without the A, so 23 apologies. And then, two, at some point in 24 time -- so we had been billing Summit and 25 Cuyahoga separately, and the request to us</p>
<p style="text-align: right;">Page 195</p> <p>1 2 those were part of this.</p> <p>3 Q. And so those hours would be 4 relevant to all five counties?</p> <p>5 A. Correct.</p> <p>6 Q. And I think I can guess what you 7 would say if I looked down to "DMA 8 Cleveland," that's relevant to work about, 9 specific to Cleveland?</p> <p>10 A. Precisely.</p> <p>11 Q. And in the fifth column, which 12 the heading in the column indicates that it 13 came from the description part of your 14 actual invoices, under "Description," on 15 the top of page 2 where it says "United 16 States," what does that mean?</p> <p>17 A. I have no idea. I asked our 18 billing team why it says United States. 19 Sometimes it says U.S. I don't know if 20 it's to delineate whether or not it's a 21 U.S. versus international investigation 22 because they are an international firm. 23 But as far as I'm concerned, it doesn't 24 reflect anything for us.</p> <p>25 Q. Have you done any international</p>	<p style="text-align: right;">Page 197</p> <p>1 2 for analysis started grouping them more 3 frequently, so we just pushed them into one 4 case.</p> <p>5 Q. These invoices that you provided 6 us in Exhibit 3 and that have been 7 summarized in Exhibit 9, they cover a time 8 period from May 31st, 2018, to May 30th, 9 2019.</p> <p>10 Is that correct -- is that the 11 correct time period for which Gryphon 12 Strategies has actually billed for work on 13 this matter?</p> <p>14 A. Correct. You know, we invoice 15 monthly, so I don't know exactly at what 16 point in May that I would have started on a 17 case, but, yes.</p> <p>18 Q. And obviously you've done work in 19 June, this month?</p> <p>20 A. Correct, yes. Those have not 21 been --</p> <p>22 Q. Those have not been billed yet?</p> <p>23 A. Yes.</p> <p>24 Q. Do you know, as you sit here 25 today, the amount of hours that you've put</p>

Page 198

1  
2 in, in June?  
3 A. No, I don't, but I'm sure they're  
4 somewhere similar as to what we've done in  
5 the past or so.  
6 Q. Did the information contained in  
7 Exhibit 3 and summarized in Exhibit 9  
8 reflect the entirety of the work that  
9 you've don't in this case?  
10 A. On this case, yes.  
11 Q. Is there any work related to  
12 opioids for this litigation that you've  
13 done that's not reflected in these  
14 exhibits?  
15 A. For this litigation, this is  
16 complete.  
17 Q. What is the distinction you're  
18 drawing there? What would be incomplete?  
19 What other work that you've done that is  
20 not for this litigation?  
21 MS. CONROY: Objection. That's  
22 actually beyond the scope, if that's  
23 what your question means.  
24 BY MS. LEVY:  
25 Q. I'm asking you, personally, what

Page 199

1  
2 work have you done that is not reflected in  
3 this litigation that relates to opioids?  
4 A. So there are other cases around  
5 the country that I've done work on.  
6 Q. Okay. Understood.  
7 Have you done any work for free,  
8 pro bono?  
9 A. Yes, but not on opioids.  
10 Q. I meant with respect to this  
11 litigation.  
12 Have you done any work with  
13 respect to opioids or this litigation under  
14 any organization other than Gryphon?  
15 A. For this litigation, no.  
16 Q. For other litigations, have you?  
17 For other cases in this litigation, have  
18 you billed through somewhere else other  
19 than Gryphon?  
20 A. No.  
21 Q. All of your work on opioids has  
22 gone through Gryphon Strategies?  
23 A. I want to make sure I'm super  
24 clear. Because like we discussed earlier,  
25 I did work at the AG's office. Of course I

Page 200

1  
2 didn't bill for that. They're not part of  
3 this litigation. So that's what I'm  
4 struggling with, making sure that I say the  
5 right thing.  
6 Q. You haven't received any payment  
7 for your work on the opioid litigation that  
8 we don't see in these exhibits, correct?  
9 A. That's correct.  
10 Q. What is your compensation  
11 structure at Gryphon?  
12 A. We're all salaried.  
13 Q. What is your salary annually?  
14 A. 180.  
15 Q. And is that -- the salary is the  
16 same regardless of what you bill?  
17 A. There is a salary and then there  
18 is a bonus at the end of the year.  
19 Q. How is the bonus calculated?  
20 A. I would love to know. But my  
21 boss decides what it is at the end of the  
22 year.  
23 Q. Did you get a bonus at the end of  
24 2018?  
25 A. I did.

Page 201

1  
2 Q. What was your bonus?  
3 A. It was either 20 or 25,000 I  
4 actually can't remember.  
5 Q. And you don't know how it was  
6 calculated?  
7 A. No.  
8 Q. Is it based on the amount that  
9 you bill or the amount you bring in?  
10 A. Yes and no. I don't really know  
11 exactly. I've asked my boss for more  
12 complete metrics. I am metric person.  
13 Some of it is time with the firm, some of  
14 it is billable, some of it is just a factor  
15 X, I think.  
16 Q. But you, Lacey Keller, are  
17 getting paid 180,000 a year regardless of  
18 what Gryphon is billing, correct?  
19 A. Correct.  
20 Q. Plus whatever bonus you get?  
21 A. Correct.  
22 Q. Got it.  
23 And have you calculated how much  
24 money Gryphon has brought in as a result of  
25 the opioid litigation?

Page 202

1

2 A. No.

3 Q. If I represent to you that your

4 own hours total 470 hours over the course

5 of the last year, does that sound about

6 right to you?

7 A. 470 hours?

8 Q. I'm sorry, 870 hours.

9 A. That probably feels about right.

10 Q. And are you aware that Gryphon

11 Strategies has invoiced over a

12 million-and-a-half dollars for work that

13 you and your team have done on the opioid

14 litigation for these particular matters?

15 A. That probably makes sense.

16 MS. LEVY: Okay. I do not have

17 any further questions for this witness.

18 I will pass you along to the next

19 co-defendant who wishes to be in this

20 seat.

21 Let's go off the record for a

22 minute so we can change questioners.

23 THE VIDEOGRAPHER: The time is

24 2:04 p.m. We are now off the record.

25 (Recess is taken.)

Page 203

1

2 THE VIDEOGRAPHER: The time is

3 2:18 p.m. We are now back on the

4 record.

5 EXAMINATION BY

6 MS. LUCAS:

7 Q. Good afternoon, Ms. Keller. I'm

8 Amy Lucas. I represent Janssen and J&J.

9 Can you turn to Exhibit 5, which

10 is your report, at page 6 and look at

11 paragraph 4, please?

12 A. Sure.

13 Q. It says, "The work I've done

14 throughout my career relates directly to

15 analysis undertaken in this report."

16 Is that accurate?

17 A. Correct.

18 Q. And you believe that, correct?

19 A. Correct.

20 Q. So if you take a look at

21 paragraph 6 down at the bottom, the second

22 sentence -- or the first about when you

23 were the at New York AG's office, the

24 second sentence says, "Frequently I was

25 given a subject area to investigate without

Page 204

1

2 having any prior expertise in the area. I

3 would then educate myself through research

4 and talking with subject matter experts to

5 allow me to help them identify new areas of

6 investigation."

7 Is that accurate?

8 A. That is.

9 Q. In circumstances where are you

10 were given an area to investigate without

11 having prior expertise in the area, why

12 would you educate yourself through research

13 and talking with subject matter experts?

14 A. So that I can best do my job.

15 Q. It's important to you to

16 understand the subject area that you're

17 working in, right?

18 A. Of course.

19 Q. And you wouldn't want to offer

20 opinions in a subject area without doing

21 the work to understand that subject area,

22 right?

23 A. Yes.

24 Q. I think you said earlier that you

25 did not consider yourself to have expertise

Page 205

1

2 in the area of manufacturers'

3 anti-diversion and suspicious order

4 monitoring programs before you were

5 retained in this matter; is that correct?

6 A. That is correct.

7 Q. And you also said earlier that

8 you never worked at the DEA, correct?

9 A. That is correct, I never worked

10 at the DEA.

11 Q. And other than speaking to

12 someone at DEA regarding the ARCOS data,

13 you hadn't spoken to anyone else at the

14 DEA, correct?

15 A. That is correct.

16 Q. You've also never worked as a

17 detective on a DEA task force, right?

18 A. That is correct.

19 Q. You've never investigated any

20 doctor who was suspected of overprescribing

21 opioids for purposes of bringing charges

22 against that doctor, correct?

23 A. That is correct.

24 Q. You've never spoken to anyone who

25 has investigated a doctor suspected of



<p style="text-align: right;">Page 206</p> <p>1</p> <p>2 overprescribing, correct, for purposes of</p> <p>3 bringing charges?</p> <p>4 A. Not that I can recall right now.</p> <p>5 Q. You have never worked on any</p> <p>6 investigation by any doctor by any state</p> <p>7 medical board related to suspected</p> <p>8 overprescribing, correct?</p> <p>9 A. Correct.</p> <p>10 Q. You've never spoken to anybody</p> <p>11 who does such investigations, correct?</p> <p>12 A. I don't think I have, no.</p> <p>13 Q. You have never managed a</p> <p>14 registrant's suspicious order monitoring</p> <p>15 program, correct?</p> <p>16 A. That is correct.</p> <p>17 Q. What did you do to educate</p> <p>18 yourself on manufacturers' anti-diversion</p> <p>19 and suspicious order monitoring programs in</p> <p>20 connection with your work in this matter?</p> <p>21 A. I read documents through</p> <p>22 discovery, so their own protocols, all of</p> <p>23 which are in my reliance materials.</p> <p>24 Q. And those are the documents cited</p> <p>25 in your report in your reliance materials,</p>	<p style="text-align: right;">Page 208</p> <p>1</p> <p>2 A. I remember having a call on a</p> <p>3 Saturday morning with someone who might</p> <p>4 have worked at the DEA, but I actually</p> <p>5 can't remember. It was like, you need to</p> <p>6 talk to this person, and we briefly</p> <p>7 discussed compliance metrics.</p> <p>8 And I don't remember a ton of the</p> <p>9 details from the conversation other than I</p> <p>10 was particularly interested in grouping or</p> <p>11 not grouping by drug code. That's --</p> <p>12 Q. What do you mean by that?</p> <p>13 A. So when you're applying</p> <p>14 compliance metrics, you can choose -- some</p> <p>15 of them call for applying certain drug</p> <p>16 codes. So a great example is the 8,000</p> <p>17 rule, right? It says it should only apply</p> <p>18 to hydrocodone and a few other ones. And</p> <p>19 so that hydrocodone would be considered its</p> <p>20 own drug code or drug grouping.</p> <p>21 And so when applying other</p> <p>22 compliance metrics, did it make sense or</p> <p>23 not make sense, depending on the metric, to</p> <p>24 group by a drug code if there is any</p> <p>25 ambiguity in the documentation.</p>
<p style="text-align: right;">Page 207</p> <p>1</p> <p>2 correct?</p> <p>3 A. Correct.</p> <p>4 Q. Other than reading those</p> <p>5 documents, what else did you do to educate</p> <p>6 yourself on manufacturers' anti-diversion</p> <p>7 and suspicious order monitoring programs?</p> <p>8 A. I reviewed some depositions.</p> <p>9 Q. Which depositions did you review?</p> <p>10 A. I wouldn't be able to recall from</p> <p>11 memory right now, but those are definitely</p> <p>12 in my reliance materials.</p> <p>13 Q. Anything else?</p> <p>14 A. I believe I already cited the</p> <p>15 Masters decision and things like that. So</p> <p>16 I believe that's all.</p> <p>17 Q. Did you talk to any subject</p> <p>18 matter experts other than the one DEA</p> <p>19 employee regarding ARCOS data?</p> <p>20 A. We might have random -- like</p> <p>21 there might have been one phone call, but I</p> <p>22 don't know that they would be subject</p> <p>23 matter experts in the area.</p> <p>24 Q. Who was the phone call with that</p> <p>25 you have in mind?</p>	<p style="text-align: right;">Page 209</p> <p>1</p> <p>2 Q. And what did -- this person was a</p> <p>3 current DEA employee?</p> <p>4 A. I believe a former.</p> <p>5 Q. And what did this person say?</p> <p>6 A. I don't really recall because it</p> <p>7 didn't really change how we were going to</p> <p>8 do it. I think, if I recall, there was</p> <p>9 some hedging of, well, it could be this or</p> <p>10 it could be that, so we just continued with</p> <p>11 exactly how we had planned.</p> <p>12 Q. Other than asking a former DEA</p> <p>13 employee about grouping by drug code for</p> <p>14 compliance metrics, have you had any other</p> <p>15 conversations with any subject matter</p> <p>16 experts regarding your work in this matter?</p> <p>17 A. Not that I can recall at this</p> <p>18 time.</p> <p>19 Q. How long did that call last?</p> <p>20 A. Oh, less than an hour for sure.</p> <p>21 Q. And when was that call?</p> <p>22 A. I don't recall the exact date.</p> <p>23 Like I said, I remember it being a Saturday</p> <p>24 morning because I remember walking my dog</p> <p>25 while I was on the call.</p>

Page 210

1  
2 Q. Do you know what makes an order  
3 reportable to the DEA as a suspicious  
4 order?  
5 A. No, I do not. As we discussed  
6 earlier, outside of my expertise.  
7 Q. Do you know whether DEA expects  
8 registrants to conduct due diligence into  
9 flagging orders -- into flagged orders to  
10 determine whether they're actually  
11 suspicious before reporting it?  
12 A. Again, as discussed earlier,  
13 outside of my expertise.  
14 Q. Did you ever discuss whether  
15 to -- strike that.  
16 Did you ever discuss whether to  
17 consider due diligence in running the  
18 metrics that you ran?  
19 A. So --  
20 Q. Let me start over.  
21 You said earlier that in your  
22 report, if something is suspicious, you  
23 mean it just was tripped by one of the  
24 metrics, right?  
25 A. That is correct.

Page 211

1  
2 Q. And just because you used the  
3 word "suspicious" in your report, that  
4 doesn't mean it's suspicious as the DEA  
5 defines under the Controlled Substances  
6 Act, correct?  
7 A. That's accurate.  
8 Q. So did you ever consider whether  
9 you should take due diligence into account  
10 in creating your definition of suspicious?  
11 A. So I'm pausing for this because  
12 there's the addendum that does the  
13 persistent flagging which assumes no due  
14 diligence because once the flag is  
15 triggered, it stays on for the perpetuity  
16 of the data set.  
17 So in the sphere that is around  
18 that, then, yes. And if we're talking  
19 about anything outside of that, then no.  
20 Q. Are you aware whether -- strike  
21 that.  
22 Did you look at any documents or  
23 deposition testimony regarding Janssen's  
24 due diligence of flagged orders?  
25 A. I might have read a document or

Page 212

1  
2 two. But, again, evaluating due diligence  
3 or any of that is outside of the scope of  
4 my expertise.  
5 Q. So even if you evaluated it, you  
6 would not have incorporated any documents  
7 related to Janssen's due diligence of its  
8 flagged orders into your opinions?  
9 A. I think the answer to that would  
10 be yes. If I read a document, it doesn't  
11 impact the findings of the report. The  
12 report was to apply the known compliance  
13 metrics to labelers on data.  
14 Q. I want to ask you about the known  
15 compliance metrics.  
16 Do you know what -- strike that.  
17 A compliance metric is the same  
18 way of saying an algorithm, right?  
19 A. Sure.  
20 Q. Okay. The SOMS algorithm, do you  
21 know what Janssen used for its suspicious  
22 order monitoring algorithm?  
23 A. If it's not in my report, then  
24 no. Or if it's in my report, then, yes.  
25 But if it's not in my report, then, no.

Page 213

1  
2 But I don't believe that we had a Janssen  
3 algorithm.  
4 Q. I'll represent to you we haven't  
5 found one.  
6 Why is it that you didn't use  
7 Janssen's suspicious order monitoring  
8 algorithm or compliance metric in your  
9 report?  
10 A. If it's not here, then, which I  
11 don't think it is, I didn't know of it. So  
12 if there was one, I'd be happy to implement  
13 it.  
14 Q. How did you choose the compliance  
15 metrics that got included in the report?  
16 A. As we were stating earlier, some  
17 were provided by counsel, others we found.  
18 Q. So there was no instruction by  
19 anyone to make sure you included all of the  
20 defendants' algorithms in your report?  
21 A. Well, I would say that's correct,  
22 there was no explicit instruction to  
23 include all or exclude all, include what  
24 you could find and go from there.  
25 Q. Is it your understanding that

Page 214

1  
2 nobody could find Janssen's suspicious  
3 order monitoring algorithm?  
4 A. I just wanted to look at one  
5 thing really quick.  
6 (Document review.)  
7 Q. What page are you on?  
8 A. I'm trying to find it. I'm  
9 sorry.  
10 Q. Are you looking for the metrics?  
11 A. Yeah. I'm looking actually for  
12 the footnote about Janssen that describes  
13 the SOMS program.  
14 (Document review.)  
15 A. Because as I understood it, there  
16 wasn't one to implement. But I just...  
17 that's what I wanted to review.  
18 (Document review.)  
19 A. So, yes, it was my understanding  
20 that there wasn't a metric.  
21 Q. It was your understanding?  
22 A. Correct.  
23 Q. Did you ask anybody to confirm  
24 that?  
25 A. I did.

Page 215

1  
2 Q. Who did you ask?  
3 A. Evan Janush, I think is his last  
4 name. J-a-n-u s-h.  
5 Q. And your understanding is that  
6 Mr. Janush told you that Janssen did not  
7 have a suspicious order monitoring  
8 compliance metric or algorithm?  
9 A. Correct, that we could implement,  
10 yes.  
11 Q. Did you find that footnote?  
12 A. Yes. I was on page 28 here.  
13 Footnote 83 is what I was looking for just  
14 to make sure.  
15 Q. And footnote 83 says, "Janssen  
16 used chargeback and value track data on  
17 occasion for size only."  
18 Is that what you were thinking  
19 of?  
20 A. That is exactly what I was  
21 thinking of.  
22 Q. And what makes you think that  
23 that supports the notion that Janssen did  
24 not have a suspicious order monitoring  
25 algorithm?

Page 216

1  
2 A. So in some of these footnotes, we  
3 cite when SOMS programs were developed and  
4 what Bates numbers support those  
5 development. And I wanted to make sure  
6 that Janssen didn't have one.  
7 Q. Are you aware that -- have you  
8 ever spoken to James Rafalski?  
9 A. I might have, but I'm not sure.  
10 Q. Have you read his report?  
11 A. Yes.  
12 Q. You're aware that he's a  
13 plaintiff's expert in this case?  
14 A. Yes.  
15 Q. And are you aware that he  
16 evaluated Janssen's suspicious order  
17 monitoring program and, in particular, the  
18 algorithm that Janssen used?  
19 A. If it was part of his report,  
20 then it would have been, yes.  
21 Q. And so if you read his report and  
22 you understood that, then why is Janssen's  
23 suspicious order monitoring algorithm not  
24 part of your report?  
25 MS. CONROY: Objection.

Page 217

1  
2 A. I believe his report was filed at  
3 the same time ours was.  
4 Q. And so you learned that Janssen  
5 had a suspicious order monitoring algorithm  
6 after your report was already in?  
7 A. Do you have Rafalski's report?  
8 I'd like to review it just to make sure  
9 that I know --  
10 Q. I don't.  
11 A. So I don't know what algorithm  
12 was discussed. I mean, his report was  
13 quite lengthy, if I recall. And so I'd  
14 have to look at it to know exactly what the  
15 algorithm was.  
16 Q. But if you would have had the  
17 algorithm, you would have incorporated it  
18 into your report; is that correct?  
19 A. Absolutely.  
20 MS. CONROY: Objection.  
21 BY MS. LUCAS:  
22 Q. What are the Janssen products at  
23 issue in this litigation?  
24 A. I don't know that I can name them  
25 by name. It would be anything that

<p style="text-align: right;">Page 218</p> <p>1</p> <p>2 appeared in the IQVIA data or your own</p> <p>3 chargeback data.</p> <p>4 Q. If you can take a look at page</p> <p>5 14, paragraph 44.</p> <p>6 (Witness complies.)</p> <p>7 Q. "I implemented the manufacturer</p> <p>8 and distributor-developed compliance</p> <p>9 metrics as documented without endorsement."</p> <p>10 What does that mean to you?</p> <p>11 A. That means what we were stating</p> <p>12 earlier on the record about I'm not</p> <p>13 endorsing saying one metric is better than</p> <p>14 another.</p> <p>15 Q. "I implemented the metrics using</p> <p>16 a close reading of the best information</p> <p>17 available for produced documents and</p> <p>18 instruction by counsel, providing the most</p> <p>19 accurate reflection of labeler defendants'</p> <p>20 monitoring programs as they were</p> <p>21 represented in their own operating</p> <p>22 procedures and documentation."</p> <p>23 What does that mean?</p> <p>24 A. Sure.</p> <p>25 So when you're reading a metric,</p>	<p style="text-align: right;">Page 220</p> <p>1</p> <p>2 listed in your report, yes or no?</p> <p>3 MS. CONROY: Objection.</p> <p>4 A. It's really outside the scope of</p> <p>5 my expertise.</p> <p>6 Q. You haven't seen any information</p> <p>7 to suggest that Janssen used any of those</p> <p>8 metrics, correct?</p> <p>9 A. I have not read a document that</p> <p>10 led me to believe that, correct.</p> <p>11 Q. Therefore, since you didn't use</p> <p>12 Janssen's algorithm in your report, you</p> <p>13 don't have any opinion on what Janssen's</p> <p>14 algorithm would or would not have flagged,</p> <p>15 correct?</p> <p>16 A. That is correct. And I would</p> <p>17 like to know, just so if we're going to</p> <p>18 continue to talk about an algorithm, maybe</p> <p>19 what it was, so I can be a little bit more</p> <p>20 informed.</p> <p>21 Q. One of the great things about</p> <p>22 deposing people is I get to ask the</p> <p>23 questions. Your counsel can provide that</p> <p>24 to you afterwards.</p> <p>25 MS. CONROY: Objection. Assumes</p>
<p style="text-align: right;">Page 219</p> <p>1</p> <p>2 sometimes people explain -- you know, it</p> <p>3 may say take the 30 day average. Well,</p> <p>4 what does that mean? Does that mean a</p> <p>5 rolling 30 day or calendar 30 day?</p> <p>6 So, you know, what I'm trying to</p> <p>7 encapsulate there is there might be -- you</p> <p>8 know, we're trying to do the best that we</p> <p>9 can, given the documents, to implement them</p> <p>10 to their truest meaning based off of</p> <p>11 testimony, depositions, the documents</p> <p>12 themselves. That's what I'm trying to</p> <p>13 represent there.</p> <p>14 Q. So what you did, though, here was</p> <p>15 you implemented metrics that Janssen didn't</p> <p>16 use, correct?</p> <p>17 A. I couldn't speak to whether</p> <p>18 Janssen did or did not use a metric.</p> <p>19 Q. Do you have any reason to believe</p> <p>20 that Janssen used any of the metrics listed</p> <p>21 in your report?</p> <p>22 A. I wouldn't know.</p> <p>23 Q. Let me ask it again.</p> <p>24 Do you have any reason to believe</p> <p>25 that Janssen used any of those metrics</p>	<p style="text-align: right;">Page 221</p> <p>1</p> <p>2 that it exists.</p> <p>3 MS. LUCAS: I think Mr. Janush</p> <p>4 knows about our -- Janssen's algorithm.</p> <p>5 BY MS. LUCAS:</p> <p>6 Q. So I wanted to talk about your</p> <p>7 small labeler opinion.</p> <p>8 And that applies only to Janssen,</p> <p>9 correct?</p> <p>10 A. That is correct.</p> <p>11 Q. And why is that?</p> <p>12 A. So small labeler, I don't mean</p> <p>13 any offense to that because I understand</p> <p>14 Johnson &amp; Johnson is a very large company,</p> <p>15 but when it comes to opioids, you have very</p> <p>16 few as it pertains to the market share,</p> <p>17 right? You're a much lower market share.</p> <p>18 Q. Actually, if you want to turn</p> <p>19 really quickly to page --</p> <p>20 A. 16 you're probably looking for.</p> <p>21 Q. I am.</p> <p>22 Page 16, table 1 and table 2.</p> <p>23 That reflects Janssen's market share in</p> <p>24 Summit County and Cuyahoga County, correct?</p> <p>25 A. Yes.</p>

Page 222

1  
2 Q. And the largest percentage on  
3 that table is 0.9 percent, and the smallest  
4 one is 0.1 percent, correct?  
5 A. That appears to be correct.  
6 Q. Did you calculate those numbers?  
7 A. I didn't do it by hand, but an  
8 algorithm did.  
9 Q. How did you do that?  
10 A. SQL query.  
11 Q. And you concluded that Janssen  
12 had between 0.1 percent and 0.9 percent  
13 market share in Summit and Cuyahoga,  
14 correct?  
15 A. Yes, depending on the metric and  
16 depending on the county.  
17 Q. And other manufacturers, either  
18 defendants or otherwise not named in the  
19 complaints, had between 99.1 and 99.9  
20 percent of the market share, correct?  
21 A. Yes. I'm assuming you're taking  
22 the hundred minus yourselves and that's  
23 everybody else, yes.  
24 Q. So then back to your small  
25 labeler opinion, why then did you conduct

Page 223

1  
2 the small labeler impact analysis as to  
3 Janssen?  
4 A. It was asked of me to see what  
5 would happen if -- again, this is a  
6 hypothetical scenario. And let me just  
7 flip to there just so I'm on the right  
8 page.  
9 Do you have it.  
10 Q. Small labelers starts on page 53.  
11 A. Thank you so much.  
12 (Document review.)  
13 A. So it would be if a labeler, like  
14 yourselves, had identified a suspicious  
15 physician -- and when I say identified  
16 suspicious, I mean using the metrics -- and  
17 then flagged them and reported them and  
18 they were taken off-line completely, what  
19 would be the downstream impact of that.  
20 Q. And why did you conduct that  
21 analysis?  
22 A. It was requested.  
23 Q. Who requested it?  
24 A. Linda Singer.  
25 Q. When did she request that you do

Page 224

1  
2 the small labeler analysis?  
3 A. At some point in March or April.  
4 Q. Did you have any input into the  
5 methodology of the small labeler impact  
6 analysis?  
7 A. Of course.  
8 MS. CONROY: Objection.  
9 BY MS. LUCAS:  
10 Q. What exactly were your  
11 instructions from Ms. Singer, to the best  
12 of your recollection?  
13 A. I would say pretty much as  
14 written was it's a hypothetical scenario,  
15 assuming that, let's say, a physician is  
16 flagged, he then or she was reported and  
17 taken off-line for the duration of his or  
18 her prescribing habits or prescribing  
19 history, I should say. How we went about  
20 doing that was on our own.  
21 And even --  
22 Q. So let me just make sure I  
23 understand. You were instructed to work  
24 backwards from a hypothetical scenario  
25 where a physician is flagged and reported

Page 225

1  
2 and taken off-line and then figure out how  
3 to create that methodology?  
4 MS. CONROY: Objection.  
5 A. I'm not sure I would characterize  
6 it that way. We were given an assignment  
7 of someone is -- a physician is flagged and  
8 then there is, you know, a lot of things  
9 that have to come after that, but assuming  
10 once they've been flagged, they're taken  
11 off-line, what is the impact on the rest of  
12 the county.  
13 Q. You said a lot of things have to  
14 happen after the flagging.  
15 What are those things that have  
16 to happen after a physician is flagged?  
17 A. So like I said earlier, I'm not  
18 an expert in due diligence or reporting  
19 requirements to the DEA.  
20 So with that in mind, to make  
21 this work, I had to make the assumption  
22 that once flagged, they stopped  
23 prescribing.  
24 Q. At the moment the flagging  
25 happened; is that correct?



Page 226

1  
2 A. I believe so, yes. I'd have to  
3 look at the code to be for certain.  
4 Q. So in order for this analysis to  
5 work, you had to assume that the prescriber  
6 was taken off-line the moment the metrics  
7 used were tripped and there was a flag,  
8 correct?  
9 MS. CONROY: Objection.  
10 A. I would say for this hypothetical  
11 situation to present itself, yes, once  
12 someone was flagged and they were taken  
13 off-line, what their, what amount of  
14 prescriptions were then taken off-line.  
15 I'm trying to say it the best way  
16 I can. I'm sorry if I'm not being clear.  
17 Q. Do you believe that your small  
18 labeler impact opinion is an accurate  
19 representation of what happens in the real  
20 world?  
21 A. I'm not really an expert to say  
22 that.  
23 Q. Do you have any beliefs on  
24 whether it's an accurate representation of  
25 what would happen in the real world?

Page 227

1  
2 A. Any beliefs? Outside of my  
3 expertise here.  
4 Q. You haven't considered it at all?  
5 A. Not as an expert.  
6 Q. As a non-expert?  
7 A. I mean, of course you think about  
8 things, but I'm not here to talk about  
9 those.  
10 Q. What do you think about it?  
11 A. I mean, I think it's a -- I  
12 guess, I mean it's like you give it  
13 fleeting thoughts of like -- I don't even  
14 really know how to talk about like random  
15 thoughts that you have like while riding a  
16 bicycle on the way to work about things.  
17 Like, you know, I'm thinking about my small  
18 labeler impact; I don't really carry it  
19 down the logical path of, well, does due  
20 diligence actually happen or does this  
21 actually happen. I don't go into that  
22 great detail. So maybe it was a  
23 mischaracterization to say do I think about  
24 it. I don't know. I've kind of walked  
25 myself into --

Page 228

1  
2 Q. Well, if you want to go back to  
3 page 11, paragraph 34: "I was asked by  
4 plaintiff's counsel to include additional  
5 analysis that examined what would have  
6 happened if a labeler with a comparatively  
7 small market share had reported and stopped  
8 supplies to suspicious prescribers.  
9 "I demonstrated that if Janssen,  
10 the defendant labeler with the second  
11 smallest market share in Summit and  
12 Cuyahoga Counties, had reported suspicious  
13 activity, prescriptions for millions of  
14 dosage units could have been stopped in  
15 Summit and Cuyahoga Counties."  
16 That's very definitive. Do you  
17 believe that is an accurate statement?  
18 A. It's a hypothetical situation.  
19 As we discussed in that section, it's a  
20 hypothetical analysis.  
21 Q. Right, but paragraph 34 says you  
22 were asked to examine what would have  
23 happened.  
24 Are you saying now that your  
25 small labeler opinion is not a statement of

Page 229

1  
2 your opinion of what would happen?  
3 A. So I would say that the change  
4 that we made earlier in the corrections  
5 where we went from "would" to "could,"  
6 those should have been throughout. I  
7 didn't really get to talk about every  
8 single change here. But, again, these are  
9 "could" statements, and I think we stated  
10 that pretty definitively in the first part  
11 of this deposition.  
12 Q. Right. I asked because I noticed  
13 that the corrections didn't apply to this  
14 paragraph. And so you are now saying that  
15 you meant to say "could" have happened?  
16 A. I would be most comfortable with  
17 saying "could."  
18 Q. And "could" means that it's  
19 feasible, correct?  
20 A. I think that's what that word  
21 means, yes.  
22 Q. Do you believe that your small  
23 labeler impact opinion is feasible in the  
24 real world?  
25 A. I'm not here -- I won't talk

Page 230

1  
2 about real world. It's outside of my  
3 expertise.  
4 Q. So you're not offering any  
5 opinion about whether your small labeler  
6 impact opinion could happen in the real  
7 world, right?  
8 MS. CONROY: Objection.  
9 A. So I think we've said here that  
10 this was what could happen. I'm not  
11 offering an opinion about what would happen  
12 or should happen.  
13 Q. Right.  
14 But you're also not offering an  
15 opinion about what could happen as applied  
16 in the real world, right?  
17 A. I guess I'm not really  
18 understanding the difference between that  
19 question and the one that I just answered.  
20 Q. Well, because you said this is  
21 all hypothetical.  
22 A. Sure, but it relies on real-world  
23 data.  
24 Q. Which data?  
25 A. The IQVIA data.

Page 231

1  
2 Q. It is then your opinion that this  
3 could happen in the real world, correct?  
4 A. It seems a little... it's a lot  
5 of time to spend on a hypothetical, but,  
6 yes, if all of the assumptions that were  
7 outlined in the report that the labeler was  
8 -- or that the labeler identified the  
9 prescriber and that all the different steps  
10 were taken to take them off-line, then,  
11 yes, it could happen in the real world.  
12 Q. Well, the only two assumptions I  
13 think I heard were that one of the metrics  
14 was tripped and a flag went up, correct?  
15 A. That is one part of the  
16 hypothetical.  
17 Q. And Janssen would report that  
18 prescriber to law enforcement as  
19 suspicious, right?  
20 A. So as part of the hypothetical,  
21 they would be tripped, Janssen could report  
22 them. That prescriber, through whatever --  
23 or they could be reported, or they could  
24 stop prescribing, whatever the means are to  
25 get them to stop prescribing.

Page 232

1  
2 But the whole point of the  
3 analysis is that that prescriber who was  
4 flagged then stops prescribing. I don't  
5 really claim or really fill out the blanks  
6 between what gets from A to B.  
7 Q. You said that your assumption is  
8 that the prescriber would stop prescribing  
9 immediately upon the metric being tripped,  
10 right?  
11 A. Correct.  
12 Q. Do you have any basis to believe  
13 that those assumptions would happen in the  
14 real world?  
15 A. It's really outside of my  
16 expertise.  
17 Q. You don't know?  
18 A. I don't know.  
19 Q. Have you ever thought when you  
20 were thinking about this analysis whether  
21 it was flawed?  
22 MS. CONROY: Objection.  
23 A. I think --  
24 MS. CONROY: Which analysis? The  
25 hypothetical you're talking about or --

Page 233

1  
2 MS. LUCAS: Her small labeler  
3 analysis.  
4 MS. LEVY: Okay. I just want --  
5 it's a pretty broad question.  
6 MS. LUCAS: The report, no.  
7 We've been talking about the small  
8 labeler. Let me ask it again.  
9 BY MS. LUCAS:  
10 Q. You said earlier that, you know,  
11 sometimes you thought about the analysis  
12 and the small labeler impact.  
13 Did you ever think that it was  
14 flawed?  
15 A. No. But I will say I always  
16 think about where things could go wrong.  
17 That's the point of being a good analyst  
18 and data scientist. It's always are we  
19 looking for the right things, have we  
20 applied things correctly, are we making  
21 conservative assumptions.  
22 Q. Where do you think things could  
23 have gone wrong in the small labeler  
24 analysis?  
25 A. So the whole hypothetical I think

Page 234

1  
2 is maybe what's at issue here. That's the  
3 hypothetical situation that I was asked to  
4 enact, so that is what it is.  
5 Q. Do you think there is anything  
6 that could have gone wrong in the small  
7 labeler analysis in the assumptions that  
8 you were making?  
9 You just said "I want things to  
10 be accurate."  
11 Do you think this is accurate?  
12 A. I think it is an accurate  
13 implementation of the hypothetical  
14 situation that we were asked to enact.  
15 Q. We'll come back to this one in a  
16 minute.  
17 I want to talk about chargeback  
18 analysis for a moment.  
19 Can you take a look at page 59  
20 and table 35.  
21 (Witness complies.)  
22 Q. And I think we said -- you said  
23 earlier that you changed -- table 35 is the  
24 use of chargeback data for compliance,  
25 right?

Page 235

1  
2 A. Correct.  
3 Q. And you changed in your  
4 corrections the Endo, Par and Qualitest nos  
5 in that far right column of whether they  
6 used chargeback in suspicious order  
7 monitoring program from "no" to "yes." But  
8 Johnson & Johnson and Janssen is listed as  
9 no without any citation.  
10 Why is that?  
11 A. So it's hard to cite to a  
12 document that I don't have. If there was a  
13 "yes," then there would be a document to  
14 cite to.  
15 Q. And did somebody tell you to  
16 assume "no" for these purposes?  
17 A. I was told, and I think reflects  
18 similarly in the footnote earlier that we  
19 discussed, maybe it was 83.  
20 Give me one second.  
21 (Document review.)  
22 Q. Well, let me ask you a different  
23 way.  
24 When you say "suspicious order  
25 monitoring program," are you talking about

Page 236

1  
2 only the algorithm?  
3 A. Yes, I think that would be a  
4 better characterization.  
5 Q. So you're excluding from  
6 suspicious order monitoring program, any  
7 follow-up due diligence that the suspicious  
8 order monitoring department did when an  
9 order was flagged, right?  
10 MS. CONROY: Objection.  
11 A. Yeah, I would say that's outside  
12 of the scope. So to the extent that there  
13 was an algorithm that we could implement  
14 and chargebacks were used as part of that  
15 algorithm, then they get the "yes" here.  
16 Q. Got it.  
17 And so...  
18 (Document review.)  
19 Q. All right. Take a look at page 4  
20 of the --  
21 MS. LUCAS: Do we have the errata  
22 sheet marked?  
23 MS. CONROY: Yes.  
24 MS. LUCAS: From 5/11?  
25 Has this been marked?

Page 237

1  
2 MS. VENTURA: No.  
3 (Keller Exhibit 10, Expert  
4 Analysis - Errata Sheet: Lacey R.  
5 Keller, not Bates-stamped, marked for  
6 identification, as of this date.)  
7 BY MS. LUCAS:  
8 Q. If you look at page 4, table 4.  
9 MS. CONROY: Do you have another  
10 copy?  
11 MS. LUCAS: Sure. I'm sorry,  
12 Jayne.  
13 BY MS. LUCAS:  
14 Q. This identifies a number of  
15 pharmacies flagged by running your  
16 compliance metrics over each labeler's  
17 chargeback data, correct?  
18 A. Sorry. Give me one second.  
19 (Document review.)  
20 A. Yes.  
21 Q. And for Janssen, it says total  
22 buyers 12.  
23 Does that mean total buyers in  
24 all or total buyers in the chargeback data?  
25 A. That would be total buyers that

Page 238

1  
2 appeared in the chargeback data.  
3 Q. And for seven of them, you say  
4 that seven were flagged by any metric,  
5 correct?  
6 A. Sorry, just a second. I just  
7 want to make sure.  
8 So your question earlier, it says  
9 total buyers, 12. Yes, total buyers in the  
10 chargeback data. And then seven of which  
11 were flagged by any metric.  
12 Q. Did you do any research yourself  
13 to determine whether any of those buyers  
14 were actually suspicious?  
15 MS. CONROY: Objection.  
16 A. That would be outside of the  
17 scope of my expertise.  
18 Q. And if you take a look back at  
19 your report in Exhibit 5 at page 28, table  
20 6, this is about IQVIA data.  
21 I want to confirm what I think is  
22 going to be the case based on what you just  
23 told me.  
24 In paragraph 80, it says,  
25 "Janssen discusses using IQVIA data for

Page 239

1  
2 one-off investigations of suspicious  
3 activity."  
4 There's no citation there. What  
5 is the basis for that statement?  
6 (Document review.)  
7 A. If it's not in my reliance, then  
8 it would have been from an attorney.  
9 Q. And the reason that you have "no"  
10 listed in the table, whether Janssen used  
11 IQVIA data for compliance, is because you  
12 were considering only the algorithm,  
13 correct?  
14 A. Yes. And now that I'm thinking  
15 about this, this citation here, chargeback  
16 and value track should really -- that  
17 citation makes more sense on the table  
18 later in the document.  
19 But again, yes, if there is an  
20 algorithm that would have referenced using  
21 IQVIA data in some way, that's the  
22 intention of giving a "yes" there.  
23 Q. Do you believe the IQVIA data  
24 that forms the basis of part one of your  
25 report, the prescriber opinions, is

Page 240

1  
2 accurate?  
3 A. I have to assume that it is.  
4 Q. Is it important that that data be  
5 accurate?  
6 A. Yes.  
7 Q. If the IQVIA data turned out to  
8 not be accurate, would that potentially  
9 affect your opinions?  
10 MS. CONROY: Objection.  
11 A. It really would depend on the  
12 error or what might be considered accurate.  
13 As we were talking earlier, the data was  
14 thought to be missing 2007. The inclusion  
15 of that would lead to a potentially  
16 additional flagging.  
17 So depending on characterization,  
18 that could be accurate/inaccurate. You  
19 know, that's a term of art, so it really  
20 depends.  
21 MS. LUCAS: I'm going to mark  
22 this Exhibit 11 an FDA report stating,  
23 "FDA reports quality problems for data  
24 provided by the firm IQVIA that were  
25 used to inform estimates for some

Page 241

1  
2 controlled substances."  
3 (Keller Exhibit 11, Press release  
4 entitled "FDA reports quality problems  
5 for data provided by the firm IQVIA  
6 that were used to inform estimates for  
7 some controlled substances", marked for  
8 identification, as of this date.)  
9 BY MS. LUCAS:  
10 Q. Have you seen this document  
11 before?  
12 A. This document, no, but I do  
13 remember reading the press release when it  
14 came out.  
15 Q. And when did you review the press  
16 release? In May of 2008?  
17 A. 2018, I believe.  
18 Q. I'm sorry, 2018.  
19 And did you have any concerns  
20 when you read this report about IQVIA data  
21 inaccuracies when you read it in 2018?  
22 A. I mean, it really depends on  
23 which data set. IQVIA offers many.  
24 Q. Did you ever ask anyone whether  
25 the data set that you had might be subject

Page 242

1  
2 to the inaccuracies that are reported in  
3 this press release?  
4 A. I mean, the data set was provided  
5 by Allergan. We did not purchase it.  
6 Q. Do you know where Allergan got  
7 the data set?  
8 A. I do not. But I assume that it's  
9 IQVIA.  
10 Q. Did you ever ask anyone, though,  
11 whether anybody had checked to see whether  
12 the data set suffered from the same  
13 inaccuracies that are in this report in  
14 Exhibit 11?  
15 A. I need to review the inaccuracies  
16 here before I answer that.  
17 (Document review.)  
18 Q. Well, it says, "While conducting  
19 analyses," this is fourth paragraph, "While  
20 conducting analyses to estimate the amount  
21 of prescription opioids sold in the U.S.,  
22 FDA found a discrepancy in the IQVIA data  
23 that showed a more than 20 percent drop in  
24 the reported amount expressed in kilograms  
25 of Fentanyl sold for a minimum of the past

Page 243

1  
2 five years compared to what IQVIA's  
3 database had previously reported."  
4 Is that something that would have  
5 been relevant to your analysis?  
6 A. It really depends on what data  
7 set's impacted, whether or not the data set  
8 was purchased prior to or after this.  
9 There's lots of factors that could go into  
10 that.  
11 Q. And did you ask anyone whether  
12 the data set you had might be affected by  
13 this inaccuracy?  
14 A. I really just needed to take the  
15 data set as it was presented.  
16 Q. Is that a no?  
17 A. Yes. Yes, that is a no, to make  
18 that clear.  
19 Q. And then if you look at the  
20 second to last paragraph of the document,  
21 third to last says, "Since the FDA  
22 identified these issues, our scientists  
23 have been looking methodically at the  
24 IQVIA data for similar errors relating to  
25 other opioids and non-opioid controlled

Page 244

1  
2 substances."  
3 And then the next paragraph says,  
4 "As a result of this work, we identified  
5 additional data quality issues related to  
6 several other controlled substances with  
7 similar weight-based conversion factors  
8 including oxymorphone and hydrocodone.  
9 These additional errors raised serious  
10 concerns about systemic issues with IQVIA's  
11 data and quality control procedures."  
12 Is that something that you would  
13 want to know, whether these errors affected  
14 the data set you were working on?  
15 A. I would definitely like to know  
16 the extent of the errors, what particular  
17 NDC codes they affected and whether this  
18 data set would be affected. But, again,  
19 there's lots of unknowns here, which data  
20 set. Is at the IQVIA XPO or other data  
21 sets.  
22 Q. So it would be important to know  
23 if the data set you were working with was  
24 affected by these errors, correct?  
25 MS. CONROY: Objection.

Page 245

1  
2 A. Yes.  
3 Q. I want to go back through --  
4 MS. CONROY: Is this a good time  
5 for a break? We've been going for  
6 about an hour. Is this a good time for  
7 a break if we finished with this  
8 document?  
9 MS. LUCAS: Yeah, we can take a  
10 short break.  
11 THE VIDEOGRAPHER: The time is  
12 3:05 p.m. We are now off the record.  
13 (Recess is taken.)  
14 THE VIDEOGRAPHER: The time is  
15 3:23 p.m. We are back on the record.  
16 BY MS. LUCAS:  
17 Q. Ms. Keller, can you take a look  
18 at page 30 of the report at Exhibit 5 and  
19 look at table 9?  
20 (Witness complies.)  
21 Q. It's the total prescriptions  
22 flagged by compliance metrics by labeler.  
23 A. Yup.  
24 Q. Then it lists the manufacturers  
25 and the number of prescriptions that were



Page 246

1  
2 flagged by the different standards and then  
3 any flag.  
4 Do you see that?  
5 A. Yes.  
6 Q. Did you ever consider what  
7 percentage of prescriptions were being  
8 flagged by these metrics in relation to the  
9 total number of prescriptions for each  
10 manufacturer?  
11 A. It doesn't appear to be one of  
12 these tables, but it would be possible to  
13 pull.  
14 Q. Did you consider it?  
15 A. I don't remember if I pulled that  
16 exact breakdown, but it's definitely a way  
17 that you can pull the data.  
18 Q. Do you know about what percentage  
19 of the prescriptions were flagged?  
20 A. By each metric? Yes. That's on  
21 table 7.  
22 Q. No, by prescriber.  
23 A. By each prescriber?  
24 Q. Right.  
25 A. So we do that --

Page 247

1  
2 Q. Or, sorry, by labeler. Strike  
3 that.  
4 Do you know each labeler, what  
5 percentage of their prescriptions were  
6 being flagged?  
7 A. Not with me, no.  
8 Q. Do you have any opinions on what  
9 percentage of doctors in the Cuyahoga and  
10 Summit County areas were prescribing  
11 irresponsibly?  
12 A. No. I stated earlier in  
13 testimony today, that's outside of my  
14 expertise.  
15 Q. I have a few more questions about  
16 your small labeler impact opinions, if you  
17 want to go back to page 53.  
18 A. Thank you.  
19 (Document review.)  
20 Q. I wanted to confirm, in your  
21 small labeler analysis, were doctors  
22 flagged for their prescriptions of Janssen  
23 products only or did you flag a doctor  
24 based on number of non-Janssen  
25 prescriptions so long as that doctor

Page 248

1  
2 prescribed any Janssen product?  
3 A. Give me one moment to re-review  
4 the methodology here.  
5 (Document review.)  
6 A. So I'd have to look at the code  
7 to make sure I'm saying this most  
8 accurately, and I would be happy to do  
9 that, but I think what we did was you had  
10 to have six months of consecutive  
11 prescribing Janssen products first. And  
12 then once you reached that threshold, you  
13 were then flagged. And I think we say  
14 here, in paragraph 114, that we used  
15 Janssen drugs as well as everybody else's.  
16 Q. Where do you see that?  
17 A. The very last statement. Oh,  
18 hang on, actually. Maybe I am misstating  
19 that. Give me one second.  
20 Q. Okay.  
21 (Document review.)  
22 A. I don't know that we actually  
23 specifically addressed whether we flagged  
24 them based off of all drugs or just Janssen  
25 products. I'd have to consult the code to

Page 249

1  
2 be for certain.  
3 Q. Let's quickly run through the  
4 code. Exhibit 12.  
5 (Keller Exhibit 12, Report on  
6 Script.SQL, not Bates-stamped, marked  
7 for identification, as of this date.)  
8 BY MS. LUCAS:  
9 Q. If you can take a look at page 7  
10 through 12. Pages 7 -- starting at the  
11 middle where it says "drop table" through  
12 page 12 that ends kind of towards the  
13 middle-ish where it says "B, year" and then  
14 the next word is "select," that's our  
15 understanding of the small labeler  
16 analysis.  
17 Could you confirm that, please?  
18 (Document review.)  
19 A. Sorry, dense code.  
20 (Document review.)  
21 A. Yes, this appears to be the small  
22 labeler analysis.  
23 Q. And by looking at this analysis,  
24 does that tell you whether or not doctors  
25 were flagged based on Janssen prescriptions

Page 250

1  
2 or all labelers' prescriptions?  
3 A. It will, but I have to find it.  
4 Sorry.  
5 (Document review.)  
6 A. So what this appears to me is  
7 that Janssen -- so you first have to  
8 prescribe a Janssen product for six months.  
9 And after that point, the first flag that  
10 you're flagged on is the flag no matter  
11 what the labeler is.  
12 Q. Where do you see that in the  
13 code?  
14 A. It's through a series of steps.  
15 So first there is a chunk of code that  
16 identifies the first date of flagging. And  
17 there is a chunk of code with a bunch of  
18 nested queries.  
19 Q. What page are you on, 7?  
20 A. I start on 7.  
21 It's actually really hard to read  
22 formatted this way, so I'm sorry. It's  
23 really hard to follow. But the gist of it  
24 is, yes, you first have a date you're  
25 flagged, your earliest flag date. And then

Page 251

1  
2 there is a date in which you are -- your  
3 first date of -- your sixth month of  
4 prescribing a Janssen product. And  
5 whatever flag date that occurs after that  
6 six month of prescribing Janssen, then you  
7 would be...  
8 Q. So let me make sure I understand  
9 this correctly.  
10 This small labeler analysis  
11 requires, in order for someone to be  
12 flagged, first requires prescribing a  
13 Janssen product for six months, correct?  
14 A. Correct, for six -- I believe  
15 it's even more stringent. It's six months  
16 within a year.  
17 Because I think we partitioned it  
18 by data date, which would give it a year.  
19 But, again, it's definitely six months of  
20 Janssen prescribing. And then after which,  
21 that point in time, then the first date of  
22 flagging.  
23 Q. Okay. So in order for a  
24 prescriber to be flagged, it would have to  
25 be six months of Janssen prescribing and

Page 252

1  
2 then one of these three metrics being  
3 tripped, not just for a Janssen product but  
4 it could be for any opioid product,  
5 correct?  
6 A. Correct. For the three products  
7 that -- so we exclude one because -- and I  
8 believe that's the McKesson 8,000 because  
9 Janssen doesn't have those drugs, and so it  
10 wouldn't really be paying attention to that  
11 line of business.  
12 And so our assumption would be,  
13 yes, any of the other three metrics could  
14 have been applied.  
15 Q. But let me just say, does the --  
16 strike that.  
17 Does the small prescriber  
18 analysis include flags that Janssen should  
19 have seen for Endo's medications?  
20 A. I'm not going to talk about what  
21 should have been seen.  
22 Q. I'm meaning that like in could it  
23 be tripped.  
24 A. Yes, because the assumption with  
25 IQVIA, just like Allergan has access to

Page 253

1  
2 data on Purdue, is that, yes, Janssen could  
3 see prescriptions being written about other  
4 labelers.  
5 Q. So in addition to the assumptions  
6 that we talked about before that Janssen --  
7 that one of the flags was tripped and then  
8 Janssen reported and then immediately the  
9 prescriber stopped prescribing after being  
10 reported to law enforcement authorities,  
11 the other assumption that's baked into here  
12 is that Janssen was monitoring other  
13 manufacturer's medications being  
14 prescribed, correct?  
15 MS. CONROY: Objection.  
16 A. I wouldn't say that they are  
17 monitoring, but --  
18 Q. Under this hypothetical.  
19 A. -- that they were looking at the  
20 prescribing history that would have  
21 included those labelers.  
22 So it depends on the metric.  
23 Some metrics look at -- some of the  
24 metric -- or, I'm sorry. Some of the  
25 metrics, so if it's "common sense" or

Page 254

1  
2 whatnot, they look at all of them together.  
3 They're not really labeler by labeler  
4 because it's the whole prescribing history  
5 that matters.  
6 Q. Do you have any basis in the  
7 evidence to say that Janssen was ever  
8 monitoring for reporting purposes other  
9 labelers' medications?  
10 A. That would be outside of my  
11 expertise.  
12 Q. Is that a "no"?  
13 A. Again, it's just outside of my  
14 expertise.  
15 Q. Well, my question is a little  
16 different.  
17 Do you have any basis in the  
18 evidence to say that you know Janssen was  
19 ever monitoring for reporting to law  
20 enforcement purposes other labeler's  
21 medications?  
22 A. So it's not as easy as a "yes" or  
23 "no" because you're asking me to review  
24 evidence that I wasn't asked to review. So  
25 I can't really make a statement here.

Page 255

1  
2 Q. So you have not seen any evidence  
3 that Janssen was reviewing for law  
4 enforcement reporting purposes other  
5 labeler's medications, correct?  
6 A. Again, I have not reviewed that.  
7 That was not my expertise.  
8 Q. Do you have any basis to believe  
9 that there is a duty under the Controlled  
10 Substances Act for any manufacturer to  
11 monitor other manufacturer's medications  
12 for purposes of reporting to law  
13 enforcement authorities?  
14 MS. CONROY: Objection.  
15 A. Again, that's outside of my  
16 expertise.  
17 Q. And you've never seen any  
18 evidence of that, right?  
19 A. Again, it's outside of my  
20 expertise, so I wouldn't be looking at that  
21 type of evidence.  
22 Q. But you haven't seen any of that  
23 evidence, correct?  
24 MS. CONROY: Objection.  
25 A. Again, I wouldn't have been

Page 256

1  
2 looking for it.  
3 Q. Well, I guess I'm trying to  
4 understand why this opinion exists if you  
5 can't tell me that there is any evidence in  
6 the record that it reflects things that  
7 actually happened.  
8 A. I mean, it was a hypothetical  
9 request by -- to me, and so that's what I  
10 enacted. I was asked to enact that.  
11 Q. Quickly, you said that your  
12 opinion assumes that the doctor would stop  
13 prescribing immediately upon being reported  
14 to law enforcement, correct?  
15 MS. CONROY: Objection.  
16 A. I would say the assumption is  
17 that they do not have any more  
18 prescriptions. However that comes to be  
19 is...  
20 Q. But do you know how long  
21 investigations into prescribers take?  
22 A. Outside of my expertise.  
23 Q. Well, if you look at page 40 of  
24 your report, on paragraph 96, it's talking  
25 about a prescriber named Ronald Celeste.

Page 257

1  
2 And there was an "...uptick in  
3 prescriptions caught the attention of the  
4 authorities, who launched a two-year  
5 investigation into his practice in 2014."  
6 So you know here, in your report,  
7 is that the investigation into Mr. Celeste  
8 lasted two years, correct?  
9 A. That was what was reported in the  
10 news.  
11 Q. And that's in your report, right?  
12 A. It is, but it's one  
13 investigation. I can't say what's typical  
14 length of time for an investigation. It's  
15 outside of my expertise.  
16 Q. Yes or no, are you aware of any  
17 instance ever in the real world where a  
18 prescriber stopped prescribing the moment  
19 that an investigation was opened into him  
20 or her?  
21 MS. CONROY: Objection.  
22 A. I'm not really here to talk about  
23 the real world. It's outside of my  
24 expertise, so I can't answer a "yes" or  
25 "no" to that.

Page 258

1  
2 Q. Well, that's not my question.  
3 I'm asking you if are aware of any instance  
4 in the real world where a prescriber ever  
5 stopped prescribing the moment an  
6 investigation was opened.  
7 A. Again outside of my expertise, so  
8 I can't speak to something that I know or  
9 don't know.  
10 Q. You don't know what you don't  
11 know?  
12 A. Actually, I don't know what I  
13 don't know?  
14 Q. I mean, I'm -- you're avoiding my  
15 question because my question is pretty  
16 simple.  
17 It's are you aware of any  
18 instance where a prescriber stopped  
19 prescribing the minute that an  
20 investigation was opened into his or her  
21 prescribing practices?  
22 MS. CONROY: Objection.  
23 BY MS. LUCAS:  
24 Q. Do you know of that, yes or no?  
25 A. I just am not going to answer a

Page 259

1  
2 question about something that's not my area  
3 of expertise.  
4 Q. Well, refusing to answer  
5 something and not knowing are different  
6 things.  
7 Is it then correct that you don't  
8 know of any instance where a prescriber  
9 stopped prescribing the minute that an  
10 investigation was opened into his or her  
11 prescribing practices?  
12 A. Look, I haven't looked at that.  
13 It's not part of my expertise. I would not  
14 know because it's not part of my expertise.  
15 Q. But you're offering an expert  
16 opinion on this fact that assumes this.  
17 And in order to offer this opinion, you  
18 have to have some factual basis for it.  
19 So do you have a factual basis  
20 for this opinion or not?  
21 MS. CONROY: Objection.  
22 A. So what I'm offering is a  
23 hypothetical scenario using the data that's  
24 been provided to me. I have no expertise  
25 in the real world, due diligence, et

Page 260

1  
2 cetera, that goes beyond that. So there's  
3 a set of assumptions that go into this and  
4 that is all.  
5 Q. So in order for you to get on the  
6 stand and testify about this opinion at  
7 trial, you must identify a factual basis.  
8 Can you do that today?  
9 MS. CONROY: Objection.  
10 A. I really don't know what will go  
11 into that and so I can't answer that.  
12 Q. Is one of the other assumptions  
13 in your small labeler impact analysis that  
14 the patient who would have gotten the  
15 prescription of the flagged doctor does not  
16 go to another doctor and get that same  
17 prescription?  
18 A. I wouldn't say that we talk about  
19 anything about patients in this report.  
20 Q. You didn't consider that?  
21 A. That was not something I would  
22 consider as part of this set of  
23 assumptions. The patients are not  
24 considered in really anywhere in this  
25 report.

Page 261

1  
2 Q. And you didn't consider also  
3 whether or not whether the medical board  
4 would revoke prescribing privileges  
5 immediately, correct?  
6 A. Again, it was not part of the  
7 assumptions yes or no. It's just we had  
8 too make the assumption -- to do the  
9 analysis, you make the assumption that the  
10 prescriber stopped prescribing. The steps  
11 between medical board, due diligence, et  
12 cetera...  
13 Q. Right. Because it doesn't work  
14 unless you assume that the prescriber  
15 stopped prescribing immediately, correct?  
16 A. I wouldn't characterize it as it  
17 doesn't work. It's just part of the  
18 exercise.  
19 Q. Well, does it work if the  
20 prescriber didn't stop prescribing  
21 immediately? Does the result stay the  
22 same?  
23 A. So you could create a period of  
24 which time -- you know, you could say give  
25 them six months after which they were first

Page 262

1  
2 flagged and implement that. It's an  
3 analysis. How I complete the analysis can  
4 work -- you can bake in any amount of time  
5 you'd like, after which time they're first  
6 flagged if that's --  
7 Q. But for this --  
8 A. -- part of this.  
9 Q. Sorry.  
10 A. Yes, but for this, that was not  
11 part assumption.  
12 MS. LUCAS: I will reserve my  
13 rights given the time constraints and  
14 that I have a few more questions or  
15 many more questions. If I were given  
16 the time, we could spend much more time  
17 together, but subject to that  
18 Reservation of Rights, we are done and  
19 I will pass the witness.  
20 Can we go off the record for just  
21 a moment?  
22 THE VIDEOGRAPHER: The time is  
23 3:42 p.m. We are now off the record.  
24 (Recess is taken.)  
25 THE VIDEOGRAPHER: The time is

Page 263

1  
2 3:45 p.m. We are back on the record.  
3 EXAMINATION BY  
4 MS. DEAN:  
5 Q. Ms. Keller, my name is Claire  
6 Dean. I'm with Covington & Burling, and  
7 I'm here on behalf of McKesson.  
8 Your time with me will be very  
9 brief.  
10 So if we could turn to page 9 of  
11 your report and to paragraph 22. And just  
12 let me know once you're there.  
13 (Witness complies.)  
14 A. Sorry.  
15 Q. No problem.  
16 A. Here we are.  
17 Q. Okay. So paragraph 22, first  
18 sentence, "This report focuses specifically  
19 and exclusively on manufacturers  
20 anti-diversion and suspicious order  
21 monitoring programs."  
22 Did I read that correctly?  
23 A. You did.  
24 Q. And just to make sure I  
25 understand what that means, to confirm, you

Page 264

1  
2 are not offering any opinions about the  
3 suspicious order monitoring programs of any  
4 wholesale distributors, correct?  
5 A. Correct.  
6 Q. You also did not review or  
7 analyze the suspicious order monitoring  
8 programs of the wholesale distributors,  
9 right?  
10 A. Correct.  
11 Q. And you're not offering any  
12 opinions here today or in the future about  
13 the anti-diversion efforts of any of the  
14 wholesale distributors; is that right?  
15 A. Not to my knowledge.  
16 Q. And you also didn't undertake a  
17 review or an analysis of the anti-diversion  
18 efforts undertaken by any wholesale  
19 distributor; is that right?  
20 A. Correct.  
21 Q. Now you offer no opinions about  
22 whether or how the distributors may have  
23 applied any of the compliance metrics  
24 discussed in your report; is that right?  
25 A. That's correct.

Page 265

1  
2 Q. And you offer no opinions on what  
3 categories of data any of the wholesale  
4 distributors may have had access to between  
5 1997 and 2017; is that right?  
6 A. That is correct.  
7 Q. You haven't reviewed any  
8 communications between DEA and  
9 distributors, right?  
10 A. That is correct.  
11 Q. And you offer no opinions about  
12 whether the distributors could have even  
13 applied any of the compliance metrics  
14 outlined in your report; is that correct?  
15 A. That is correct.  
16 Q. And with respect to opinions on  
17 suspicious order monitoring programs and  
18 the anti-diversion efforts, you also offer  
19 no opinions as to McKesson specifically; is  
20 that correct?  
21 A. That is correct.  
22 Q. Now I'd like to turn to page 18  
23 of your report, paragraph 57.  
24 Now this is where you introduce  
25 the McKesson 8,000 rule.



Page 266

1  
2 Now you cite a single McKesson  
3 document here.  
4 You are not offering any opinions  
5 about how McKesson may have applied its  
6 lifestyle drug monitoring program; is that  
7 right?  
8 A. Correct.  
9 Q. You're not offering any opinions  
10 about how McKesson's lifestyle drug  
11 management program was operated at  
12 McKesson?  
13 A. That is correct.  
14 Q. You're not offering any opinions  
15 about whether the lifestyle drug monitoring  
16 program complied or did not comply with the  
17 Controlled Substances Act; is that correct?  
18 A. That's correct. Outside of my  
19 expertise.  
20 Q. You're not offering any opinions  
21 about what due diligence steps may have  
22 been taken by McKesson personnel during the  
23 lifestyle drug monitoring program, right?  
24 A. That is correct. Outside of my  
25 expertise.

Page 267

1  
2 Q. And you didn't undertake any  
3 review or analysis to determine due  
4 diligence steps that may have been taken by  
5 McKesson under the lifestyle drug  
6 monitoring program, right?  
7 A. That is correct. Outside of my  
8 expertise.  
9 Q. Now last couple of questions from  
10 me and then we will move on to somebody  
11 else.  
12 I'd like to turn to page 79 of  
13 your report, please.  
14 A. Sure.  
15 Q. And actually if you could turn  
16 over to page 80, paragraph 151.  
17 (Witness complies.)  
18 Q. In paragraph 151, you referenced  
19 McKesson. So I wanted to confirm that you  
20 are not offering any opinions about  
21 McKesson as it relates to the Rite Aid  
22 pharmacy you're discussing in paragraph  
23 151, correct?  
24 A. Correct. I think all we're doing  
25 is just citing that document there and the

Page 268

1  
2 facts behind it.  
3 Q. But you're not offering any  
4 opinions about McKesson's involvement with  
5 that pharmacy or with Dr. Adolf Harper; is  
6 that correct?  
7 A. Correct. I would -- that's  
8 outside of my expertise.  
9 Q. Okay. And that's outside of the  
10 scope of the opinion in the report and the  
11 opinion you may intend to offer at trial;  
12 is that right?  
13 A. I think that's a correct  
14 characterization.  
15 Q. Okay. And, sorry, I just want to  
16 make sure I'm clear because I'm not  
17 positive that he was included in this.  
18 The same is true for Dr. Adolf  
19 Harper, you're not offering any opinions  
20 about McKesson as it relates to Dr. Adolf  
21 Harper; is that right?  
22 A. Correct.  
23 Q. Now last questions.  
24 Sitting here today, are you aware  
25 of any future opinions you may be offering

Page 269

1  
2 against McKesson?  
3 A. I mean, anything is possible, but  
4 not right this second.  
5 Q. So as it stands today and as  
6 outlined in your report, your opinions are  
7 being offered exclusively against the  
8 labeler defendants and no opinions  
9 currently being offered against  
10 distributors including McKesson; is that  
11 right?  
12 A. Yes. The report focuses solely  
13 on labelers.  
14 MS. DEAN: Okay. I don't have  
15 any further questions, and I will pass  
16 my time to someone else.  
17 Thank you, Ms. Keller.  
18 THE WITNESS: Thanks, Ms. Dean.  
19 THE VIDEOGRAPHER: The time is  
20 3:52 p.m. We are now off the record.  
21 (Recess is taken.)  
22 THE VIDEOGRAPHER: The time is  
23 3:54 p.m. We are now on the record.  
24  
25 EXAMINATION BY

Page 270

1

2 MR. LAVELLE:

3 Q. Good afternoon, Ms. Keller. My

4 name is John Lavelle. I'm an attorney at

5 Morgan Lewis, and I am representing

6 defendant Rite Aid of Maryland.

7 I'd like to ask you to turn to

8 your report, page 63.

9 (Witness complies.)

10 A. I'm there. Sorry.

11 Q. Thank you. That's fine.

12 So beginning in paragraph 127 of

13 your report, you start a discussion of what

14 you refer to as "suspicious pharmacies"; is

15 that right?

16 A. Correct, we use that term.

17 Q. Where does that term come from?

18 What do you mean by "suspicious

19 pharmacies"?

20 A. So as we stated earlier on the

21 record today, it's those pharmacies that

22 triggered our metrics or the metrics that

23 we employed, I should be more correct to

24 say.

25 Q. And you discuss in your report

Page 271

1

2 six different pharmacies that you label as

3 suspicious pharmacies, right?

4 A. They were six pharmacies that at

5 some point triggered one of the compliance

6 metrics.

7 Q. How are these six pharmacies

8 selected?

9 A. Some were selected because of

10 their size in the county. Some were

11 selected because of the number of -- like I

12 think their prescriptions, so if they were

13 particularly high dose or not. Others were

14 because they were known to the court. And

15 others -- and I believe the Rite Aid, for

16 example, was because it was mentioned in

17 conjunction with Adolf Harper.

18 Q. So I think you referred to three

19 different reasons there, if I got what you

20 just testified correctly.

21 You referred to some as being

22 selected because of their size in the

23 county, some because they were known to the

24 court, and then the Rite Aid because it was

25 mentioned in conjunction with Adolf Harper?

Page 272

1

2 A. And then probably a fourth, I

3 would add, of just unusual prescribing --

4 or, I'm sorry, we've been talking about

5 physicians all day. Chargebacks or

6 purchases. So if it's particularly high

7 dose or -- I don't really recall exactly

8 what reason went into each one, but that's

9 generally how examples come to me.

10 Q. Who selected them?

11 A. I did.

12 Q. Anybody else involved in your

13 selection process?

14 A. I think there was... I think the

15 New Choice Pharmacy was one that was either

16 known to the court or was requested of me.

17 Q. When you say "known to the

18 court," can you tell us what you mean by

19 that?

20 A. Yeah. From what I understand or

21 what I recall is like there's documents

22 about Adolf Harper or some of the other

23 physicians in the report. And so with the

24 pharmacies, I understood there to be

25 documentation about them as well.

Page 273

1

2 Q. So anyone else at Gryphon

3 involved in the selection of these six

4 pharmacies other than yourself?

5 A. My staff.

6 Q. Anyone in particular assigned

7 with that task?

8 A. I would say a group of them

9 worked on it just to determine, you know,

10 what would be a short list of good examples

11 to show in the report.

12 Q. Were you asked by counsel to

13 identify any particular pharmacies?

14 A. As I said earlier, I think New

15 Choice would have been one.

16 Q. Were you -- how did you learn

17 about Dr. Harper?

18 A. That's a good question.

19 Q. I thought so.

20 (Laughter.)

21 A. I honestly don't know if it was

22 from reading court documents or being in

23 the same office as some of the -- and I

24 don't want to get into privilege here, but

25 working in the same office as our

Page 274

1  
2 investigative team.  
3 Q. Did you look at any other  
4 pharmacies other than the six that you  
5 discussed in this report?  
6 A. Definitely.  
7 Q. Were there any others that you  
8 are prepared to offer opinions about if  
9 you're called to testify at trial other  
10 than these six pharmacies?  
11 A. So to be clear, I don't mean to  
12 offer opinions about these pharmacies, just  
13 how they appear in the data.  
14 And, two, not at this time.  
15 Q. You're not a pharmacist, right?  
16 A. That is correct.  
17 Q. You have no expertise in  
18 operations of pharmacies, right?  
19 A. That is correct.  
20 Q. As you sit here today, do you  
21 have any plans to work on developing  
22 opinions about pharmacies in the future?  
23 A. Not at this moment, no.  
24 Q. All right. Let's turn to the  
25 section of your report that discusses the

Page 275

1  
2 Rite Aid store, which I believe you  
3 referred to as flag pharmacy 6. That  
4 begins on page 79 of your report.  
5 A. I'm there.  
6 Q. All right. This is a Rite Aid  
7 store that is located at 1047 Kenmore  
8 Boulevard in Akron, Ohio, right?  
9 A. I believe so.  
10 Q. Was there any reason other than  
11 the fact that it was associated with  
12 Dr. Harper, in your view, that it was  
13 flagged for discussion in your report?  
14 A. I'd have to look at my notes to  
15 be for certain. There might be other  
16 reasons, but I don't -- I can't recall them  
17 right now. But, again, it could have been  
18 because of the number of prescriptions that  
19 it was -- I'm sorry, the number of  
20 shipments that it had at its -- I'm not  
21 saying that correctly. I'm sorry. I've  
22 been talking about prescriptions all day.  
23 The number of chargebacks that it had or  
24 the total number of shipments if we had  
25 looked at, like, the ARCOS data, for

Page 276

1  
2 example.  
3 Q. All right. In paragraph 150,  
4 which begins on page 79 and goes on to page  
5 80, can you read the last sentence that  
6 actually appears on page 80? It starts  
7 with the word "Mallinckrodt."  
8 A. "Mallinckrodt was the only  
9 defendant labeler to identify the pharmacy  
10 as suspicious, placing them on a 2016  
11 cutoff pharmacy list."  
12 Q. What is your basis for saying  
13 that?  
14 A. I believe there is a citation  
15 there.  
16 Q. All right. You have a citation  
17 and a footnote to a particular document; is  
18 that right?  
19 A. That's what I understand that to  
20 be.  
21 Q. Do you remember what that  
22 document is?  
23 A. It's characterized in the  
24 paragraph as a "cutoff pharmacy list."  
25 Q. Do you know whose term "cutoff

Page 277

1  
2 pharmacy" is? Is that a Mallinckrodt term?  
3 A. If we're putting it in quotes, it  
4 would be Mallinckrodt's, but I'd like to  
5 review the document if we want to be  
6 precise.  
7 Q. All right. I think I have the  
8 document and I can show it to you.  
9 Generally speaking, do you recall  
10 what that document was?  
11 A. I'd have to look at it to be  
12 certain.  
13 MR. LAVELLE: All right. Let me  
14 mark this as an exhibit.  
15 (Keller Exhibit 13, Document  
16 produced in native format beginning  
17 with Bates-stamp MNK-T1\_0001315847,  
18 marked for identification, as of this  
19 date.)  
20 BY MR. LAVELLE:  
21 Q. Ms. Keller, I've put in front of  
22 you what we marked for Identification as  
23 Exhibit 11.  
24 I'll represent to you this is a  
25 printout from a document that was produced

Page 278

1  
2 in native format. And the original, as I  
3 understand it, is a spreadsheet.  
4 A. Okay.  
5 Q. I will also tell you that it is a  
6 spreadsheet that has two tabs. And I only  
7 printed out one of the two tabs.  
8 A. Okay.  
9 Q. And the reason for that, I will  
10 tell you, is the second tab has 160,000  
11 fields on it and it would fill up hundreds  
12 and hundreds of pages.  
13 So looking at this tab, do you  
14 recognize this document?  
15 A. Yes. I mean, I don't remember it  
16 exactly. I looked at a lot of data sets  
17 through this whole thing, so I can't really  
18 recall exactly which ones look familiar and  
19 which ones don't.  
20 Q. Do you know how a decision would  
21 have been made by your team as to which of  
22 the two tabs in a spreadsheet should be  
23 used as the tab on which to run analysis?  
24 MS. CONROY: Objection.  
25 A. What's on the other tab?

Page 279

1  
2 Q. All right. So that's the tab  
3 that is a giant spreadsheet. And although  
4 I ask the questions here, I will tell you  
5 that there were over 135,000 rows on that  
6 tab.  
7 As you are sitting here,  
8 Ms. Keller, do you believe there was over  
9 135,000 pharmacies on the Mallinckrodt list  
10 of cutoff pharmacies?  
11 A. I wouldn't know.  
12 Q. You wouldn't know?  
13 A. I wouldn't know what they put  
14 on -- let me say that a little bit -- I  
15 wouldn't know exactly how -- to the extent  
16 of how many pharmacies Mallinckrodt would  
17 cut off or were put on a cutoff list.  
18 Q. Do you see the Rite Aid pharmacy  
19 located at 1047 Kenmore Boulevard in Akron,  
20 Ohio, on this list that I've put in front  
21 of you that we marked as Exhibit 11?  
22 MS. CONROY: 13.  
23 MR. LAVELLE: I'm sorry, 13. My  
24 apologies.  
25 (Document review.)

Page 280

1  
2 A. I don't see that pharmacy in  
3 Exhibit 13, but I don't know what's on the  
4 other tab or what the whole entire document  
5 is.  
6 Q. So would you agree with me that  
7 if this particular tab that we marked as  
8 Exhibit 13 is in fact the cutoff pharmacy  
9 list, that that Rite Aid pharmacy is not in  
10 it?  
11 A. I would agree that -- and let me  
12 do one more run-through to be sure.  
13 Q. Sure.  
14 (Document review.)  
15 A. I would say that I do not see  
16 Rite Aid in this Exhibit 13.  
17 Q. Have you ever heard of something  
18 called a chargeback restriction  
19 reinstatement list?  
20 A. No, I have not.  
21 Q. Have you ever seen the email to  
22 which this document that we marked as  
23 Exhibit 13, the spreadsheet, was attached?  
24 A. Not that I can recall sitting  
25 here.

Page 281

1  
2 Q. All right. Well, let's mark it  
3 as an exhibit, and I'll show it to you and  
4 you can tell us whether you've seen it  
5 before or not. Thank you.  
6 (Keller Exhibit 14, Email chain  
7 beginning with email dated 9/23/16 from  
8 K. Harper to McKenzie, Bates-stamped  
9 MNK-T1\_0001315844 through 5846, marked  
10 for identification, as of this date.)  
11 BY MR. LAVELLE:  
12 Q. Ms. Keller, we've marked as  
13 Exhibit 14, a document that's Bates-stamped  
14 MNK-T1\_0001315844 through 46. It's an  
15 email chain. And I'll just note for the  
16 record that it immediately precedes the  
17 Bates number of the document we were  
18 looking at just a moment ago which was  
19 Exhibit 13.  
20 So my question is: Have you ever  
21 seen this document, the one we marked as  
22 Exhibit 14, before?  
23 A. This does not look familiar to  
24 me.  
25 Q. All right. Can we just look at

Page 282

1  
2 the second page of this document? There is  
3 an email there from a Karen Harper of  
4 Mallinckrodt to Patrick Dudley of Cardinal  
5 Health dated Wednesday, March 30, 2016, at  
6 2:06 p.m.  
7 Do you see that?  
8 A. I'm there, yes.  
9 Q. And the second paragraph,  
10 Ms. Harper writes to Mr. Dudley, "For your  
11 convenience, I have attached the current  
12 spreadsheet of pharmacy chargeback  
13 restrictions and reinstatements.  
14 (Reinstatements highlighted in green.)"  
15 Do you remember ever seeing that  
16 before?  
17 A. I do not.  
18 Q. Do you know whether the pharmacy  
19 chargeback restrictions and reinstatements  
20 list is the list that you intended to refer  
21 to as the pharmacy cutoff list in your  
22 report?  
23 A. I really couldn't be sure without  
24 consulting what we had.  
25 Q. What would you need to look at in

Page 283

1  
2 order to be able to answer that question?  
3 A. I would need to look at the  
4 document as it was produced to us and how  
5 it appeared.  
6 Q. And do you have notes as well  
7 that you would be able to look at?  
8 A. I might.  
9 Q. What kind of notes might you  
10 have?  
11 A. They might be notes to myself or  
12 notes by my staff.  
13 Q. Now you make this same statement  
14 about Mallinckrodt being the only defendant  
15 labeler to identify a pharmacy as  
16 suspicious putting them on the cutoff  
17 pharmacy list with respect to each and  
18 every one of these six pharmacies, don't  
19 you?  
20 A. I'd have to look.  
21 Q. Well, let's start by looking at  
22 paragraph 128 on page 63 of your report.  
23 That's the section that refers to the  
24 Marc's 23PU pharmacy.  
25 (Document review.)

Page 284

1  
2 A. Okay.  
3 Q. Do you have that in front of you?  
4 A. I do. Thank you.  
5 (Document review.)  
6 A. Yes, I see that. Same citation.  
7 Q. And you cite the same document  
8 again, right?  
9 A. Yes.  
10 Q. The Marc's 23PU pharmacy isn't in  
11 that spreadsheet either, is it?  
12 A. It's not in an exhibit -- I have  
13 to look, but it's not in Exhibit 13.  
14 Q. Right.  
15 A. Again, there is a second tab, and  
16 I'd have to look at the entire document to  
17 be certain.  
18 Q. Turn to paragraph 120 -- I'm  
19 sorry, page -- the CVS section here.  
20 Paragraph 133 on page 67.  
21 A. Okay.  
22 Q. Again you have that same  
23 sentence, do you not, "Mallinckrodt was the  
24 only defendant labeler to identify the  
25 pharmacy as suspicious, placing them on a

Page 285

1  
2 2016 cutoff pharmacy list," right?  
3 A. Again, the same citation.  
4 Q. And the same citation and the  
5 same document?  
6 A. Correct.  
7 Q. All right. We can go through  
8 this process for each of them, but suffice  
9 it to say that none of these six pharmacies  
10 appear on what we marked as Exhibit 13.  
11 So does that suggest to you that  
12 you relied on the second tab of whatever  
13 that document is?  
14 A. If Exhibit 13 is the first tab  
15 and the pharmacies are in the second tab,  
16 then logic would be yes.  
17 Q. All right. And if it turned out  
18 that tab 2 was not the cutoff pharmacy list  
19 but in fact was a listing of every pharmacy  
20 in the United States, that would have been  
21 a mistake, right?  
22 A. I'd have the review that to be  
23 sure.  
24 Q. You don't have a view as we sit  
25 here today as whether or not a tab that had



Page 286

1  
2 over 135,000 rows in a spreadsheet could  
3 possibly be a cutoff pharmacy list?  
4 MS. CONROY: Objection.  
5 A. Again, I'm not here to talk about  
6 what actually was suspicious or not  
7 suspicious from the labelers' perspective.  
8 So that's outside of my expertise. I  
9 wouldn't have known what would have been a  
10 reasonable amount.  
11 Q. All right. Coming back to the  
12 discussion of that Rite Aid pharmacy on  
13 page 80, paragraph 151, and I think you  
14 said this earlier, that you viewed this as  
15 connected to Dr. Harper, this Rite Aid,  
16 correct?  
17 A. Yes, I believe there was some  
18 documents there that discussed that  
19 Rite Aid in connection with Dr. Harper.  
20 Q. Yes.  
21 Do you remember what those  
22 documents were? You cite two documents in  
23 your footnote there at the bottom of page  
24 80.  
25 A. I don't recall them off the top

Page 287

1  
2 of my head.  
3 Q. Do you have any recollection of  
4 what they were at all? Were they emails?  
5 Were they spreadsheets? What were they?  
6 A. I'd have to look to be certain.  
7 Q. All right. You don't have any  
8 recollection at all even if --  
9 A. I'm sorry, there's like hundreds  
10 of cites and hundreds of thousands of rows  
11 of data.  
12 Q. All right. Well, let me mark  
13 that as the next exhibit, next two  
14 exhibits, and we can look at them together?  
15 (Keller Exhibit 15, Email chain  
16 beginning with email dated 10/31/11  
17 from Oriente to Nichols, Bates-stamped  
18 MCKMMDL006332908 through 2910, marked  
19 for identification, as of this date.)  
20 BY MR. LAVELLE:  
21 Q. And so Ms. Keller, we marked as  
22 Exhibit 15 the document that's  
23 Bates-stamped MCKMDL00632908 through 10,  
24 which I think is the first document you  
25 reference in this footnote; is that right?

Page 288

1  
2 A. That looks correct.  
3 Q. Do you recognize this document?  
4 A. Yes.  
5 Q. How did you find this document?  
6 A. I don't recall.  
7 Q. Did someone give it to you?  
8 A. I don't recall. I really don't.  
9 Q. Did you do searches for records  
10 through documents in the process of  
11 preparing your report?  
12 A. We did.  
13 Q. You say in this report that this  
14 Rite Aid "...requested that McKesson  
15 increase its threshold on oxycodone because  
16 of increased activity from Dr. Harper,  
17 though one request was denied."  
18 Do you remember saying that in  
19 your report?  
20 A. I'm looking at that statement  
21 here.  
22 Q. Right.  
23 Who denied that request?  
24 A. Based off the statement, I would  
25 assume McKesson, but I'd have to look at

Page 289

1  
2 the document.  
3 Q. All right. Well, let's take a  
4 look at this document that we have in front  
5 of you.  
6 You see at the top first page,  
7 Mr. Oriente from McKesson is the author of  
8 an email?  
9 Let's start by looking -- this is  
10 one of the email chains that goes from  
11 bottom to top.  
12 You see on the second page, the  
13 one that is Bates-stamped No. 9, there is  
14 an email from Sophia Lai at Rite Aid.  
15 Do you see that?  
16 A. Sorry, at the --  
17 MS. CONROY: Here, turn it.  
18 (Document review.)  
19 A. It copied Sophia Lai.  
20 Q. Right.  
21 So the first email is from Dave  
22 Gustin at McKesson. And he says, "Let me  
23 know if this is truly needed," right?  
24 A. That looks --  
25 MS. CONROY: Okay.

Page 290

1  
2 A. It's hard to follow, but it looks  
3 like the first one is from Jenna Nichols  
4 and the second one is from Dave.  
5 Q. Right.  
6 Let's go to the second page of  
7 this document, the email from Sophia Lai.  
8 And she is at Rite Aid, correct?  
9 A. Correct.  
10 Q. What does Ms. Lai say? She says,  
11 "Please hold off," right?  
12 A. She says those words, correct.  
13 Q. Direct quote, "Please hold off.  
14 We have certain procedures we need the PDM  
15 to verify prior to a second increase. I  
16 will follow up and let you know if we need  
17 to increase the threshold."  
18 Right?  
19 A. She does say those words.  
20 Q. Okay. And then on the top of  
21 this document, Mr. Oriente from McKesson  
22 says that "The doctor is an OB/GYN, not a  
23 pain management specialist. I'm going to  
24 deny this additional increase," right?  
25 A. That's where things get hard to

Page 291

1  
2 read.  
3 Q. It's at the top of the first page  
4 here.  
5 A. Okay. So I assume all the rest  
6 of this is copy-and-paste or what --  
7 Q. Well, just can you agree with me  
8 that Mr. Oriente says at the top of this  
9 email, "The doctor listed for the threshold  
10 review may be an issue that you want to do  
11 additional due diligence on. He is an  
12 OB/GYN not a pain management specialist.  
13 I'm going to deny this additional  
14 increase"?  
15 A. He does say those words.  
16 Q. Right.  
17 All right. Now does looking at  
18 this help you remember what the other  
19 document was? I'm trying to speed this  
20 along, but I can --  
21 MS. CONROY: The other document  
22 referenced in footnote 155?  
23 MR. LAVELLE: Yes.  
24 A. No, we'd have to go through those  
25 as well. I'm sorry.

Page 292

1  
2 Q. Okay. That's okay. I have it  
3 here. I will show it to you now.  
4 (Keller Exhibit 16, Email chain  
5 beginning with email dated 10/31/11  
6 from Lai to Oriente and others,  
7 Bates-stamped MCKMDL00626683 through  
8 6685, marked for identification, as of  
9 this date.)  
10 BY MR. LAVELLE:  
11 Q. Ms. Keller, we marked as  
12 Exhibit 16, a document Bates-stamped  
13 MCKMDL00626683 through 5.  
14 A. Okay.  
15 Q. Would you agree with me that's  
16 the second document that's referenced in  
17 that footnote of yours?  
18 A. That is what we cite, yes.  
19 Q. All right. You can look through  
20 the whole email. I believe it is actually  
21 pretty much a copy of a large part of the  
22 same chain we were looking at before except  
23 there is a new email at the top from Sophia  
24 Lai to a group of people at McKesson,  
25 October 31, 2011.

Page 293

1  
2 Do you see that?  
3 A. I see that.  
4 Q. And can you read for us what  
5 Ms. Lai says in her email to the  
6 individuals at McKesson?  
7 A. She says, "I agree. We ran a  
8 report and checked his DEA number and saw  
9 the same thing. We have the PDM reviewing  
10 a checklist to visit the clinic. No  
11 increase at this time. Thanks."  
12 Q. All right. So having looked at  
13 both of these documents, does that help  
14 refresh your recollection as to who denied  
15 the request for an increase?  
16 A. Yes.  
17 Q. Who was it?  
18 A. Well, it appears that McKesson  
19 denies the increase.  
20 Q. And Rite Aid did too, didn't  
21 they?  
22 MS. CONROY: Objection.  
23 A. I can read the words that  
24 Rite Aid said here when they say "please  
25 hold off," but I don't know how -- if I

Page 294

1  
2 would characterize it as a denial. I'm not  
3 really an expert in that.  
4 Q. Okay. You reference also the  
5 deposition of Sophia Lai Novack in that  
6 same footnote, right?  
7 A. I do.  
8 Q. Did you read that?  
9 A. You'd have to refresh my memory.  
10 I read or skimmed a lot of depositions.  
11 Q. Do you remember as you sit here  
12 today whether Ms. Novack was actually shown  
13 a copy of either of those documents?  
14 A. That, I don't know.  
15 Q. How did you pick Ms. Novak's  
16 deposition to cite here?  
17 A. I don't recall specifically, but  
18 I -- it might have been suggested to me.  
19 Q. By whom?  
20 A. An attorney.  
21 Q. Ms. Singer, perhaps?  
22 A. That, I don't recall.  
23 Q. If it wasn't Ms. Singer, who else  
24 could it have been?  
25 A. I don't remember all the

Page 295

1  
2 attorneys. I worked with several, so I  
3 don't recall the names, but I could look.  
4 Q. Were you given access to a  
5 database of depositions?  
6 A. If they were in Relativity, then  
7 yes.  
8 Q. Do you remember as you sit here  
9 whether you were given access to  
10 depositions as part of that Relativity  
11 database or not?  
12 A. I definitely know I searched for  
13 some of the depositions somewhere that were  
14 in here.  
15 Q. With respect to Dr. Harper, you  
16 described that he surrendered his license  
17 in May of 2012, right? I think you say  
18 that in paragraph 104 of this report on  
19 page 46.  
20 A. Sorry, say again. What  
21 paragraph?  
22 Q. Paragraph 104, which is on page  
23 46.  
24 A. Thank you.  
25 (Document review.)

Page 296

1  
2 A. Correct.  
3 Q. And you also say that he pled  
4 guilty to drug-trafficking charges in 2014.  
5 You say that in paragraph 105.  
6 A. That appears to be so.  
7 Q. Where did you get that  
8 information?  
9 A. That must be from the press  
10 release that we read online.  
11 Q. Are you aware that the  
12 deposition's been taken in this place of  
13 the detective who was the lead investigator  
14 on Dr. Harper's investigation?  
15 A. Am I aware that there have been  
16 depositions taken? No.  
17 Q. Have you ever heard of the name  
18 Detective Patrick Leonard?  
19 A. No.  
20 Q. Are you aware that he was the  
21 lead detective on the Harper investigation?  
22 A. No.  
23 Q. Are you aware that his deposition  
24 was taken in this case?  
25 A. No.

Page 297

1  
2 Q. Are you aware that he testified  
3 that he was given a tip by a pharmacist  
4 working at the Rite Aid pharmacy on Kenmore  
5 Avenue in Akron over a year before  
6 Dr. Harper had to surrender his license?  
7 Were you aware of that?  
8 A. As I said, I didn't read the  
9 deposition, so I wouldn't be aware of  
10 anything that was in it.  
11 Q. Were you aware that tips were  
12 provided to law enforcement officials by  
13 other pharmacies in addition to that  
14 Rite Aid pharmacy that you flagged in this  
15 report?  
16 A. No, that would be outside of my  
17 expertise. And, again, I didn't read his  
18 deposition, so I wouldn't know.  
19 Q. So no one told you, for example,  
20 that CVS also flagged Dr. Harper over a  
21 year before his license was revoked?  
22 A. I was not told that, no.  
23 Q. Did anyone tell you that  
24 Walgreens also flagged Dr. Harper and  
25 complained about him to law enforcement

Page 298

1  
2 over a year before his license was revoked?  
3 A. No, again outside of what I would  
4 have been told or looked at in this report.  
5 Q. Did anyone tell you that Giant  
6 Eagle, a supermarket chain which operates  
7 pharmacies, also complained about  
8 Dr. Harper to local law enforcement  
9 officials over a year before his license  
10 was revoked?  
11 A. No, as it was outside of the  
12 scope of this report.  
13 Q. And I suppose no one told you  
14 that another local pharmacy, Ritzman  
15 Pharmacy, also complained about Dr. Harper  
16 to local law enforcement officials over a  
17 year before his license was revoked?  
18 A. Same answer. Again, it would be  
19 outside of the scope, so I was not told  
20 that, no.  
21 Q. So when you say in your report  
22 that this Rite Aid pharmacy was associated  
23 with Dr. Harper, you're not referring to  
24 the fact that this Rite Aid pharmacy  
25 provided a tip to local law enforcement

Page 299

1  
2 officials that were actually important in  
3 starting the investigation against him; is  
4 that right?  
5 MS. CONROY: Objection.  
6 A. So when I say this Rite Aid was  
7 associated, you know, it's the documents  
8 that we cite there. Again, as far as what  
9 was actually done by labelers or pharmacies  
10 in the course of actual due diligence or on  
11 the ground, as we were saying earlier in  
12 the day, enforcement actions, that would be  
13 outside of the scope of my expertise or  
14 report.  
15 Q. It's outside of your expertise.  
16 It's also outside of your knowledge, right?  
17 A. I think that would be correct to  
18 say, that I... I think that would be  
19 correct to say.  
20 Q. Thank you, Ms. Keller. That is  
21 all I have.  
22 A. Thank you.  
23 THE VIDEOGRAPHER: The time is  
24 4:27 p.m. We are off the record.  
25 (Recess is taken.)

Page 300

1  
2 THE VIDEOGRAPHER: The time is  
3 4:42 p.m. We are back on the record.  
4 EXAMINATION BY  
5 MS. O'GORMAN:  
6 Q. Good afternoon, Ms. Keller. My  
7 name is Debra O'Gorman. I represent Purdue  
8 defendants, and I have just a few questions  
9 for you this afternoon.  
10 If you could take a look at  
11 Exhibit 5, your expert report, page 89.  
12 And I'll refer you to the references to 867  
13 data.  
14 A. I'm there.  
15 Q. And you said you had 867 data  
16 only for Purdue; is that correct?  
17 A. Correct.  
18 Q. And what is 867 data?  
19 A. I think we addressed this earlier  
20 today, and it's my intention to state the  
21 same answer. But I understand it to be  
22 data that labelers have that tracks the,  
23 their products.  
24 Q. Do you recall the time period  
25 covered by Purdue's 867 data?

Page 301

1  
2 A. Yes. I would have that here.  
3 On page 59, table 34, after  
4 processing, that would be from 2009 to  
5 2018. That was the data that was provided  
6 to me.  
7 Q. And you mentioned in your report  
8 that you had 3,572 files of 867 data.  
9 Do you recall that?  
10 A. Yes. I'd have to go back to the  
11 methodology, but I believe it was produced  
12 in more than 3,000 files.  
13 Q. And what did you do, if anything,  
14 to combine those files?  
15 A. Sure.  
16 So you can see on page 90,  
17 paragraph Z, we had 3,572 files of five  
18 different schemas. So they were all  
19 without column headers, from what I  
20 understand, but I could be wrong in stating  
21 that because it doesn't -- I'm sorry, one  
22 of them did not have a schema, but they had  
23 different schema lengths, and so those were  
24 then appended to one another based off of  
25 the columns in common.

Page 302	Page 304
<p>1</p> <p>2 Q. So you combined those files and</p> <p>3 then used that to run your analysis?</p> <p>4 A. That's correct.</p> <p>5 Q. Okay. If I can refer you to page</p> <p>6 20 of your expert report, you reference</p> <p>7 there certain Purdue algorithms.</p> <p>8 A. Correct.</p> <p>9 Q. And what is algorithm?</p> <p>10 A. It can mean anything to anybody,</p> <p>11 to be honest. The term has been somewhat</p> <p>12 polluted recently to mean anything. A lot</p> <p>13 of companies like to say they have this</p> <p>14 fancy algorithm to predict X, Y and Z, but</p> <p>15 as far as this, we interpreted an algorithm</p> <p>16 to mean an operating procedure or something</p> <p>17 that was documented as to be done by the</p> <p>18 labeler.</p> <p>19 Q. And what, if anything, did you do</p> <p>20 to try to replicate Purdue's algorithms for</p> <p>21 your report?</p> <p>22 A. Those would be in the addendum.</p> <p>23 Q. So for your initial report, you</p> <p>24 didn't do anything to replicate Purdue's</p> <p>25 algorithms?</p>	<p>1</p> <p>2 different deposition that -- or document</p> <p>3 that referenced a set of the metrics.</p> <p>4 And then in looking for a</p> <p>5 definition of chargeback, we found the</p> <p>6 other metrics.</p> <p>7 Q. Okay.</p> <p>8 MS. O'GORMAN: Can you mark this</p> <p>9 as the next exhibit.</p> <p>10 (Keller Exhibit 17, Purdue Pharma</p> <p>11 L.P. document Bates-stamped</p> <p>12 PDD1503450011 through 0024, marked for</p> <p>13 identification, as of this date.)</p> <p>14 BY MS. O'GORMAN:</p> <p>15 Q. We marked as Exhibit 17 a</p> <p>16 document Bates-stamped PDD1503450011.</p> <p>17 Is this one of the documents that</p> <p>18 you used to identify Purdue metrics?</p> <p>19 A. Let me be for certain.</p> <p>20 Q. I believe it's referenced on page</p> <p>21 26 of your expert report in one of the</p> <p>22 footnotes, although you use the Bates</p> <p>23 number ending in 12, which is the second</p> <p>24 page of the document.</p> <p>25 A. Yes.</p>
Page 303	Page 305
<p>1</p> <p>2 A. Correct. I think the one that we</p> <p>3 mention here, there was not enough</p> <p>4 information to be able to implement it</p> <p>5 accurately, but we do in the addendum.</p> <p>6 Q. Okay. And in the addendum, you</p> <p>7 add five metrics that you obtained from</p> <p>8 Purdue documents; is that correct?</p> <p>9 A. Without counting them, but, yes,</p> <p>10 we implement a number of --</p> <p>11 Q. And those are on pages 26 and 30</p> <p>12 of your supplemental report, correct?</p> <p>13 A. Yes. I see one, two that were</p> <p>14 manufactured to prescriber. And then one,</p> <p>15 two, three that were manufactured to</p> <p>16 pharmacy metrics.</p> <p>17 Q. Do you recall if these metrics</p> <p>18 were identified by you or somebody on your</p> <p>19 team?</p> <p>20 A. They were identified by me or</p> <p>21 somebody on my team.</p> <p>22 Q. And do you know how they were</p> <p>23 identified?</p> <p>24 A. I believe one I found out after</p> <p>25 filing the report because I was reading a</p>	<p>1</p> <p>2 Q. Was this document available to</p> <p>3 you at the time you prepared your initial</p> <p>4 report?</p> <p>5 A. If it was cited in the report,</p> <p>6 then it was. But as I said earlier in my</p> <p>7 testimony, that I believe we received the</p> <p>8 document a little bit too soon to filing to</p> <p>9 be able to implement these metrics.</p> <p>10 Q. And it looks like numbers 2 and 4</p> <p>11 on page that ends in 12 of this report were</p> <p>12 implemented by you in your addendum as</p> <p>13 Purdue metrics; is that right?</p> <p>14 A. Correct.</p> <p>15 Q. And you did not apply the other</p> <p>16 criteria identified in this document,</p> <p>17 correct?</p> <p>18 MS. CONROY: Objection.</p> <p>19 A. So, for example, the cash</p> <p>20 prescriptions, I don't --</p> <p>21 (Interruption.)</p> <p>22 THE VIDEOGRAPHER: The time is</p> <p>23 4:48 p.m. We are now off the record.</p> <p>24 (Recess is taken.)</p> <p>25 THE VIDEOGRAPHER: The time is</p>



<p style="text-align: right;">Page 306</p> <p>1</p> <p>2 4:50 p.m. We are back on the record.</p> <p>3 BY MS. O'GORMAN:</p> <p>4 Q. So before we had an unintended</p> <p>5 break, you were telling me about or I asked</p> <p>6 you about the application of other criteria</p> <p>7 in this Purdue document.</p> <p>8 A. Yes.</p> <p>9 So as far as implementing other</p> <p>10 or speaking about other SOMS programs, no,</p> <p>11 that would be outside of expertise.</p> <p>12 But as you can see on the</p> <p>13 document, there could be considered a</p> <p>14 metric on point 3 where it talks about cash</p> <p>15 prescriptions as an example.</p> <p>16 I was not provided with data</p> <p>17 about the number of cash prescriptions as</p> <p>18 part of total prescriptions. I didn't have</p> <p>19 that type of data. And I think I even note</p> <p>20 that in my limitations.</p> <p>21 Q. Okay. And you see that the</p> <p>22 numbers 3, 4, 5, and 6 on this document are</p> <p>23 various steps that would be taken.</p> <p>24 Do you see those there?</p> <p>25 A. Sure. I see those steps. Sorry.</p>	<p style="text-align: right;">Page 308</p> <p>1</p> <p>2 the Purdue metrics that you've included in</p> <p>3 your supplemental addendum?</p> <p>4 A. Yes. I think the ones that we</p> <p>5 implement are from that 2010 to 2012 period</p> <p>6 because those are the ones that we felt</p> <p>7 that we could, we had enough information</p> <p>8 to -- hang on to make sure.</p> <p>9 (Document review.)</p> <p>10 Q. I believe it's in the 2012 to</p> <p>11 2015 -- ^ ck speaker</p> <p>12 A. That's --</p> <p>13 Q. -- time period?</p> <p>14 A. I misspoke when I said 2010 to</p> <p>15 2012. Her correction of 2012 to 2015.</p> <p>16 Q. And how did you come to select</p> <p>17 these metrics?</p> <p>18 A. So as we went through, if there</p> <p>19 was something that we felt that could</p> <p>20 create a flag or a metric, then we could.</p> <p>21 And so these specifically say metric No. 1,</p> <p>22 metric No. 2 and metric No. 3, so that is</p> <p>23 why we chose those.</p> <p>24 Q. And these are listed here as</p> <p>25 additional metrics.</p>
<p style="text-align: right;">Page 307</p> <p>1</p> <p>2 I didn't mean to be flippant.</p> <p>3 Q. And do you know whether any</p> <p>4 action was taken in conforming with those</p> <p>5 steps in connection with any orders that</p> <p>6 you flagged under this metric?</p> <p>7 A. That would be outside of the, my</p> <p>8 expertise.</p> <p>9 (Keller Exhibit 18, Document</p> <p>10 produced natively, Bates-stamped</p> <p>11 PPLP004449246, marked for</p> <p>12 identification, as of this date.)</p> <p>13 BY MS. O'GORMAN:</p> <p>14 Q. We marked as Exhibit 18 a</p> <p>15 document numbered PPLP004449246.</p> <p>16 Do you recognize this document as</p> <p>17 one from which you obtained Purdue metrics?</p> <p>18 A. I do. I found it.</p> <p>19 Q. And on the fifth page of that</p> <p>20 document, there is a list of additional</p> <p>21 metrics to identify pharmacies for review.</p> <p>22 Do you see that there on the</p> <p>23 bottom page?</p> <p>24 A. Yes.</p> <p>25 Q. And is this where you obtained</p>	<p style="text-align: right;">Page 309</p> <p>1</p> <p>2 Do you see that in the title?</p> <p>3 A. Yes.</p> <p>4 Q. Does that suggest to you that</p> <p>5 these are in addition to other metrics that</p> <p>6 were being applied?</p> <p>7 A. I don't really know what else --</p> <p>8 I don't really understand or really weighed</p> <p>9 the considerations of the other documents.</p> <p>10 I just saw some metrics that I attempted to</p> <p>11 implement here.</p> <p>12 Q. And do you see that these metrics</p> <p>13 require or contemplate that there will be a</p> <p>14 review when metrics might be triggered, the</p> <p>15 last two bullet points under that same</p> <p>16 section?</p> <p>17 A. I do see those statements on this</p> <p>18 document.</p> <p>19 Q. And you have no knowledge of any</p> <p>20 review that would have been done by Purdue</p> <p>21 in connection with any orders that might</p> <p>22 have been flagged under your application of</p> <p>23 the metrics; is that correct?</p> <p>24 A. Correct. I would not speak to</p> <p>25 the actual on-the-ground due diligence or</p>

Page 310

1  
2 what was done in real life.  
3 Q. And am I also correct that you're  
4 not suggesting that the DEA required any of  
5 these metrics that you've identified?  
6 MS. CONROY: Objection.  
7 A. Correct. That would be outside  
8 of my expertise.  
9 Q. And you're not offering an  
10 opinion on the real-world results or the  
11 application of any of these metrics; is  
12 that correct?  
13 A. That would be correct.  
14 Q. Now we've talked earlier at your  
15 deposition about the IQVIA data set that  
16 you utilized for your review.  
17 Do you recall that testimony?  
18 A. Yes, I remember speaking about  
19 IQVIA.  
20 Q. And that was the Allergan data  
21 set that you reviewed, correct?  
22 A. Correct.  
23 Q. Do you have any familiarity with  
24 what information Purdue received from IQVIA  
25 or IMS at any point in time?

Page 311

1  
2 A. I did review some documents.  
3 Q. And what do you recall about  
4 those documents?  
5 A. So I have, in my other reliance  
6 materials that I brought with me this  
7 morning, documents that cite Purdue's  
8 purchases of IQVIA data from several years  
9 over the past, at least into the '90s. I  
10 don't remember at what point those start.  
11 Q. Do you know what data  
12 specifically Purdue purchased from IQVIA  
13 for particular years?  
14 A. Xponent.  
15 Q. Do you know whether Purdue  
16 received information related to all opioids  
17 or only its own products at any given point  
18 in time?  
19 A. I'd have to consult the document  
20 to be certain.  
21 Q. Do you have any expertise in  
22 pharmaceutical marketing?  
23 A. I do not.  
24 Q. Have you ever worked for a  
25 pharmaceutical company?

Page 312

1  
2 A. I have not.  
3 Q. Have you ever been present for a  
4 sales call by a pharmaceutical  
5 representative?  
6 A. No.  
7 Q. Do you have any expertise in the  
8 purpose for which sales calls are made?  
9 A. I do not.  
10 Q. Is it correct, then, that you  
11 have no familiarity with the educational  
12 component of sales calls by pharmaceutical  
13 representatives?  
14 A. That would be outside of my  
15 expertise.  
16 Q. Have you ever reviewed call notes  
17 for a pharmaceutical company?  
18 A. I have.  
19 MS. CONROY: In any --  
20 THE WITNESS: Oh, sorry.  
21 MS. CONROY: In any litigation?  
22 MS. O'GORMAN: Ever.  
23 MS. CONROY: Yeah, okay.  
24 BY MS. O'GORMAN:  
25 Q. In what situation have you

Page 313

1  
2 reviewed call notes?  
3 A. So I think we cite to a few call  
4 notes in this document.  
5 Q. And do you consider yourself to  
6 have any expertise in the interpretation of  
7 call notes?  
8 A. No.  
9 Q. Have you reviewed any of the  
10 other expert -- any of the defense expert  
11 reports that have been submitted in this  
12 matter?  
13 A. Yes.  
14 Q. Do you know which ones you  
15 reviewed?  
16 A. Bell, Buthusiem, I might be  
17 saying it wrong, to be honest with you. We  
18 already talked about that.  
19 Q. Any others?  
20 A. That is all.  
21 Q. Do you recall reading a report by  
22 Iain Cockburn?  
23 A. No.  
24 Q. If you can take a look at your  
25 initial expert report, page 16, tables 1

Page 314

1  
2 and 2.  
3 A. Sure. I am there.  
4 Q. And what was Purdue's market  
5 share in the relevant counties by  
6 prescription as listed in tables 1 and 2?  
7 A. 3.3 in table 1 in terms of total  
8 county percentage and 3.7 -- for Summit  
9 County, I should say. And 3.7 for  
10 prescriptions in Cuyahoga County.  
11 Q. Is that information that you  
12 calculated?  
13 A. That would be through a SQL  
14 script, yes.  
15 MS. O'GORMAN: I have no further  
16 questions. Thank you.  
17 THE VIDEOGRAPHER: The time is  
18 4:59 p.m. We are now off the record.  
19 (Recess is taken.)  
20 THE VIDEOGRAPHER: The time is  
21 5:00 p.m. We are now back on the  
22 record.  
23 FURTHER EXAMINATION BY  
24 MS. LEVY:  
25 Q. Ms. Keller, I am Jenny Levy

Page 315

1  
2 again. I have what I think should be a  
3 really quick follow-up question based on  
4 your responses to the questioning by the  
5 last three lawyers who have been  
6 questioning you.  
7 A couple times in your answer you  
8 keep referring to the Allergan data.  
9 Do you remember the answers that  
10 I'm referring to?  
11 A. Yes, I think so.  
12 Q. And when you refer to the  
13 Allergan data, you're referring to the body  
14 of data from IQVIA XPONENT database,  
15 correct?  
16 A. That's correct. It's actually  
17 cited in this exhibit that you just handed  
18 me, I believe.  
19 Q. A couple of your answers make it  
20 seem to me as if you are under the  
21 impression that Allergan, the business, has  
22 always had that data.  
23 Is that the impression that  
24 you're under?  
25 A. That, I wouldn't know for

Page 316

1  
2 certain, but they did produce data for the  
3 entire time period '97 and 2017.  
4 (Keller Exhibit 19, Letter on  
5 Kirkland & Ellis letterhead dated  
6 8/31/18 from Welch to Donna Welch to  
7 the Plaintiffs' Executive Committee,  
8 not Bates-stamped, marked for  
9 identification, as of this date.)  
10 BY MS. LEVY:  
11 Q. Okay. I'm going to show you what  
12 has been marked as Exhibit 19. We just put  
13 that in front of you.  
14 A. Thank you.  
15 Q. I assume that you have not seen  
16 this document before right now.  
17 Am I right about that?  
18 A. That is correct.  
19 Q. Okay. This is a document from --  
20 on Kirkland & Ellis letterhead. That is --  
21 I'll represent to you that is the law firm  
22 we're in right now. It's my law firm. And  
23 this is a letter from my partner Donna  
24 Welch to the Plaintiffs' Executive  
25 Committee.

Page 317

1  
2 Do you see that?  
3 A. I do see that.  
4 Q. And do you know what the  
5 Plaintiff's Executive Committee is?  
6 A. I do not know what that is.  
7 Q. Okay. And you look at the second  
8 page of Exhibit 19 on the back, when you  
9 see the list of the cc's on this  
10 document --  
11 (Document review.)  
12 Q. -- and you see in that list of  
13 cc's you see among other lawyers, Linda  
14 Singer's name, second to the last?  
15 A. I do.  
16 Q. Do you recognize any of the other  
17 lawyers on that cc list?  
18 A. Tom Egler.  
19 Q. Is he one of the lawyers that you  
20 interacted with in preparation with your  
21 opinions in this case?  
22 A. Not particularly, no.  
23 Q. How do you recognize that name  
24 then?  
25 A. He was the one that I remembered

<p style="text-align: right;">Page 318</p> <p>1</p> <p>2 knowing to ask -- or his name came up, I</p> <p>3 guess is more correct to say, in getting</p> <p>4 the IQVIA data.</p> <p>5 Q. So if you turn back over to the</p> <p>6 front page of Exhibit 19, in the second</p> <p>7 bolded section that's labeled "IQVIA Data,"</p> <p>8 are you with me?</p> <p>9 A. I'm there.</p> <p>10 Q. In that paragraph it says, "On</p> <p>11 August 10th, 2018, Allergan Finance</p> <p>12 produced data from IQVIA's XPONENT and</p> <p>13 XPONENT PLANTRAK products related to</p> <p>14 prescriptions of opioids from 1997 to the</p> <p>15 present."</p> <p>16 And there is a cite there that</p> <p>17 says, "See Allergan MDL02485011."</p> <p>18 Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. If you turn in your report to</p> <p>21 page 28 and you look at footnote 81, that's</p> <p>22 the same data set that you cite in your</p> <p>23 report as the Allergan data, correct?</p> <p>24 A. Give me one second. Sorry.</p> <p>25 (Document review.)</p>	<p style="text-align: right;">Page 320</p> <p>1</p> <p>2 prior to the purchase.</p> <p>3 MS. LEVY: I'm going to pass you</p> <p>4 along to someone else. Thank you.</p> <p>5 THE WITNESS: Thank you.</p> <p>6 THE VIDEOGRAPHER: The time is</p> <p>7 5:05 p.m. We are going off the record.</p> <p>8 (Recess is taken.)</p> <p>9 THE VIDEOGRAPHER: The time is</p> <p>10 5:07 p.m. We are on the record.</p> <p>11 EXAMINATION BY</p> <p>12 MR. HAMMOUD:</p> <p>13 Q. Good afternoon, Ms. Keller. My</p> <p>14 name is Adam Hammoud. I'm an attorney from</p> <p>15 Morgan Lewis, and I represent Teva</p> <p>16 Pharmaceuticals USA Inc., Cephalon, Inc.</p> <p>17 and Actavis, LLC, which I will collectively</p> <p>18 refer to as the Teva defendants, if that's</p> <p>19 all right.</p> <p>20 A. Great to meet you.</p> <p>21 Q. Good to meet you.</p> <p>22 Could you explain what national</p> <p>23 drug codes are?</p> <p>24 A. Sure.</p> <p>25 A National Drug Code is an NDC.</p>
<p style="text-align: right;">Page 319</p> <p>1</p> <p>2 A. That is correct.</p> <p>3 Q. Okay. And then this letter goes</p> <p>4 on to say, "As stated in the statement of</p> <p>5 work we are producing today, this data was</p> <p>6 purchased by Allergan for the first time on</p> <p>7 May 15th, 2018. Allergan Finance and its</p> <p>8 predecessor companies did not have this</p> <p>9 data prior to the purchase."</p> <p>10 Do you see that?</p> <p>11 A. I do.</p> <p>12 Q. Did any of the lawyers that you</p> <p>13 worked with in this case tell you that</p> <p>14 Allergan did not in fact have this data</p> <p>15 prior to the purchase?</p> <p>16 A. It was not made aware to me that</p> <p>17 they had purchased the data for this, as</p> <p>18 it's stated here.</p> <p>19 Q. And my question is slightly</p> <p>20 different.</p> <p>21 Did any of the lawyers in this</p> <p>22 case tell you that Allergan did not have it</p> <p>23 prior to the purchase?</p> <p>24 A. No, that was not told to me that</p> <p>25 Allergan did not have access to the data</p>	<p style="text-align: right;">Page 321</p> <p>1</p> <p>2 I think somewhere in one of my reliance</p> <p>3 materials, it breaks down what the</p> <p>4 components of an NDC are, the first few</p> <p>5 being an identifier for the labeler and the</p> <p>6 rest about the package.</p> <p>7 Q. Okay. And you talked about this</p> <p>8 a little bit earlier, but can you explain</p> <p>9 the process that you followed for assigning</p> <p>10 national drug codes to specific labelers?</p> <p>11 A. Sure.</p> <p>12 So the first few digits, I can't</p> <p>13 remember if it's four or five, I would have</p> <p>14 to look at the breakdown of it, is for the</p> <p>15 labeler itself.</p> <p>16 And I don't recall for this</p> <p>17 particular litigation -- or for this</p> <p>18 particular assignment needing to assign</p> <p>19 labelers to NDC codes, because they either</p> <p>20 came to me through the ARCOS data or they</p> <p>21 were through the IQVIA processing file.</p> <p>22 Q. And so your testimony is you</p> <p>23 either retrieved the national drug codes</p> <p>24 and assigned them to labelers based on what</p> <p>25 was available to you in the ARCOS data or</p>

<p style="text-align: right;">Page 322</p> <p>1</p> <p>2 the IQVIA data; is that correct?</p> <p>3 A. Sorry. Let me state that more</p> <p>4 clearly.</p> <p>5 The ARCOS data as it came to me</p> <p>6 for this report was processed by McCann.</p> <p>7 And McCann, I believe, already had taken</p> <p>8 those steps. So to the extent that he had</p> <p>9 done that, that was done.</p> <p>10 Q. And so you're relying on some of</p> <p>11 the work that McCann performed on the ARCOS</p> <p>12 data, correct?</p> <p>13 A. That would be correct.</p> <p>14 Q. Okay. And how did you account</p> <p>15 for any changes in the NDC or the National</p> <p>16 Drug Code ownership by the labelers that</p> <p>17 resulted from, for example, acquisitions</p> <p>18 among the labelers?</p> <p>19 A. Sure. I think we discussed this</p> <p>20 a little bit earlier.</p> <p>21 So, for example, the ARCOS file,</p> <p>22 I think the -- and I'm guessing at how</p> <p>23 McCann processed it, so you would have to</p> <p>24 take his testimony and his methodology as</p> <p>25 how he actually did it. But if I were him,</p>	<p style="text-align: right;">Page 324</p> <p>1</p> <p>2 Teva Parenteral and Med and Teva</p> <p>3 Pharmaceuticals assigned to Teva, correct?</p> <p>4 A. I do see that.</p> <p>5 Q. And then if you turn back to page</p> <p>6 85 briefly, here is where you see Teva as</p> <p>7 the labeler named group for Teva</p> <p>8 Pharmaceuticals USA, Actavis Pharma, Inc.,</p> <p>9 Allergan, Inc., Cephalon, Inc. and Watson</p> <p>10 Pharma, Inc.; is that correct?</p> <p>11 A. That is correct.</p> <p>12 Q. Does that mean that all the NDCs,</p> <p>13 the national drug codes assigned to Teva</p> <p>14 Pharmaceuticals USA, Inc., Actavis Pharma,</p> <p>15 Inc., Allergan, Inc., Cephalon, Inc.,</p> <p>16 Watson Pharma, Inc. in that table and in</p> <p>17 your analysis were included in the</p> <p>18 transactions that were flagged for Teva's</p> <p>19 products?</p> <p>20 A. Correct. All of the products</p> <p>21 underneath each one of these, so Teva,</p> <p>22 Actavis, Allergan, Cephalon, and Watson</p> <p>23 were all grouped under Teva.</p> <p>24 Q. And was that for all points in</p> <p>25 time?</p>
<p style="text-align: right;">Page 323</p> <p>1</p> <p>2 what you would do is take the NDC labeler</p> <p>3 file from the FDA and then match it based</p> <p>4 off of the first four. And so that data</p> <p>5 set is available at a snapshot in time.</p> <p>6 And then for the IQVIA data, that</p> <p>7 came with a processing file, so it has</p> <p>8 nothing to do with NDCs, but the IQVIA</p> <p>9 unique identifier for each drug and then</p> <p>10 match those across.</p> <p>11 Q. Okay. And if you turn to page 85</p> <p>12 of your report.</p> <p>13 (Witness complies.)</p> <p>14 Q. You can turn to page 87. And</p> <p>15 look at table 77 for me.</p> <p>16 In table 77, you identify Actavis</p> <p>17 Pharma, Inc., Allergan, Inc., Cephalon,</p> <p>18 Inc. and Watson Pharma, Inc. as part of the</p> <p>19 labeler named group under Teva; is that</p> <p>20 correct?</p> <p>21 A. Are we looking at table 77?</p> <p>22 Q. Yes.</p> <p>23 A. So I see Allergan, Teva, and Teva</p> <p>24 and another Teva.</p> <p>25 Q. So you see Allergan, Teva CNS,</p>	<p style="text-align: right;">Page 325</p> <p>1</p> <p>2 A. Yes.</p> <p>3 Q. All right. And if you turn</p> <p>4 briefly to page 28, footnote 79, here in</p> <p>5 this footnote, it says, "Teva acquired the</p> <p>6 Actavis/Watson generic pharmaceutical</p> <p>7 business from Allergan in 2016, and those</p> <p>8 entities are currently operating under the</p> <p>9 Teva SOMS system. Prior to 2016, the</p> <p>10 Actavis/Watson operated under Allergan's</p> <p>11 SOMS system."</p> <p>12 Did I read that correctly?</p> <p>13 A. You did.</p> <p>14 Q. And is that your testimony today,</p> <p>15 do you believe that to be truthful that,</p> <p>16 excuse me, that Teva acquired the Actavis</p> <p>17 and Watson generic pharmaceutical business</p> <p>18 from Allergan in 2016?</p> <p>19 A. As it states in my report, yes.</p> <p>20 Q. What I'm trying to understand is</p> <p>21 where you got the -- what support you have</p> <p>22 that Teva acquired Allergan, Inc.</p> <p>23 A. What support I have that Teva</p> <p>24 acquired Allergan?</p> <p>25 I think as we were stating</p>



Page 326

1  
 2 earlier, that there is a document, and I  
 3 would be happy to provide it if it's not  
 4 part of our reliance materials.  
 5 Q. Okay. But you're not sure one  
 6 way or the other if Teva, in fact, acquired  
 7 Allergan, right?  
 8 A. I'm not an expert in corporate  
 9 acquisition, no.  
 10 Q. No worries.  
 11 Back to national drug codes.  
 12 Did you distinguish any of the  
 13 national drug codes for generic  
 14 opioid-containing products various national  
 15 drug codes for branded opioid-containing  
 16 products? Did you make any -- did you  
 17 distinguish between generic and branded  
 18 products in any way?  
 19 A. Not for this, no.  
 20 Q. Okay. And were the national drug  
 21 codes pulled from the IQVIA data that you  
 22 received, I guess, that was produced by  
 23 Allergan but that you received through  
 24 plaintiff's counsel?  
 25 A. So just to clarify. ARCOS have

Page 327

1  
 2 NDCs. Chargebacks generally have NDCs.  
 3 But the IQVIA data does not contain a NDC.  
 4 It has its own unique identifier, and it's  
 5 impossible to know what that NDC --  
 6 Q. Okay.  
 7 A. -- what corresponding NDC is  
 8 there. They have their own little number.  
 9 Q. Understood.  
 10 So you obtained that NDC from  
 11 chargebacks in ARCOS data; is that correct?  
 12 A. Yes, there were NDCs and  
 13 chargebacks in ARCOS.  
 14 Q. Did you remove any national drug  
 15 codes during your analysis?  
 16 A. Sure.  
 17 Q. And I guess you can -- if you  
 18 need to refer to it, in page 94 of your  
 19 report, paragraph 170, you start to talk  
 20 about that a little bit.  
 21 Do you recall the process you  
 22 followed for removing those national drug  
 23 codes?  
 24 A. So there's a few things I think  
 25 that are being conflated here.

Page 328

1  
 2 So this section here is talking  
 3 about chargebacks, and it's cleaning  
 4 steps that were taken -- so paragraph 170  
 5 is talking about the steps to process the  
 6 chargeback data. If you want to ask me  
 7 about the NDC codes and specifically which  
 8 ones weren't included or included in the  
 9 analysis, I think I talk about that earlier  
 10 in a different paragraph of the report.  
 11 Q. Okay. Even with respect to the  
 12 chargeback data, you said there were  
 13 invalid NDCs. That NDC values were  
 14 identified that could not be validated by  
 15 DEA, FDA or CMBS data sources; is that  
 16 correct?  
 17 A. That is correct. I looked to see  
 18 if I could match -- so when we received the  
 19 data, some of the NDCs were just either cut  
 20 off, incomplete, mispadded. So NDCs need  
 21 to be padded to a 9, 10 or 11-digit format  
 22 following a certain formatting structure.  
 23 And if any one of those combinations of  
 24 formatting didn't match what would have  
 25 been a valid NDC in any of the files that I

Page 329

1  
 2 searched, and I tried very hard to try to  
 3 find a match for these files because I  
 4 didn't want to exclude data, then they  
 5 would have been excluded.  
 6 So, you know, an example, and I  
 7 remember seeing it, would be an NDC code of  
 8 just straight zeroes. Zero, zero, zero,  
 9 zero, zero. That would not have been  
 10 included.  
 11 Q. Okay. Thank you.  
 12 Turning now to suspicious order  
 13 monitoring analytics and programs, are you  
 14 familiar with Cephalon, Inc.?  
 15 A. To the extent that its name  
 16 appears in the data, but not much beyond  
 17 that.  
 18 Q. Did you review any documents  
 19 regarding Cephalon's suspicious order  
 20 monitoring program?  
 21 A. I don't believe that we have a  
 22 Cephalon flag. And I don't remember,  
 23 sitting here right now, reviewing any  
 24 documents about their program.  
 25 Q. So you did not review any

<p style="text-align: right;">Page 330</p> <p>1</p> <p>2 documents regarding Cephalon's</p> <p>3 investigation of any transactions or orders</p> <p>4 that it may have flagged, correct?</p> <p>5 MS. CONROY: Objection.</p> <p>6 A. Correct. That would be outside</p> <p>7 of my scope, too.</p> <p>8 Q. Turn to paragraph 69.</p> <p>9 A. I'm sorry, paragraph 69, not</p> <p>10 page?</p> <p>11 Q. Yes. It's on page 21. Sorry.</p> <p>12 A. I am there.</p> <p>13 Q. Okay. Did you review any</p> <p>14 documents regarding Teva's SORDS of one</p> <p>15 system?</p> <p>16 A. Yes.</p> <p>17 Q. So I see here --</p> <p>18 A. I'm sorry, SORDS I?</p> <p>19 Q. Yes. Here in paragraph 69 you</p> <p>20 say, "Teva's SOMS system (referred to as</p> <p>21 SORDS II) was in effect from approximately</p> <p>22 2012 to 2015, when it was replaced by a</p> <p>23 system called DefOps," D-e-f, O-p-s.</p> <p>24 A. So SORDS I, I recall maybe</p> <p>25 briefly seeing some documentation on it,</p>	<p style="text-align: right;">Page 332</p> <p>1</p> <p>2 weren't able to programmatically implement</p> <p>3 it.</p> <p>4 Q. Okay. And you're aware that the</p> <p>5 DefOps program, as you state here, went</p> <p>6 into effect in 2015; is that right?</p> <p>7 A. That is what it states here. And</p> <p>8 I believe there's transcripts that state</p> <p>9 that.</p> <p>10 Q. But you did -- but you did apply</p> <p>11 the algorithm used by Teva's SORDS II</p> <p>12 system, that right, correct?</p> <p>13 A. That appears to be correct.</p> <p>14 Q. Okay. And you gathered</p> <p>15 information about that algorithm through a</p> <p>16 review of something called the Buzzeo -- or</p> <p>17 what you referred to as the Buzzeo/Cegedim</p> <p>18 compliance report in paragraph 69; is that</p> <p>19 correct?</p> <p>20 A. That is what we cite, yes.</p> <p>21 Q. Okay. Did you review any</p> <p>22 documents besides the Buzzeo/Cegedim</p> <p>23 compliance report to gather information</p> <p>24 about Teva's SORDS II system?</p> <p>25 A. If they're cited here, I'd have</p>
<p style="text-align: right;">Page 331</p> <p>1</p> <p>2 but I think mostly -- I'm thinking most</p> <p>3 clearly about the ones that are referenced</p> <p>4 here.</p> <p>5 Q. Okay. And so you did not attempt</p> <p>6 to apply any algorithms from Teva's SORDS I</p> <p>7 program to any of the data, correct?</p> <p>8 A. Correct. If they're not here,</p> <p>9 then we didn't apply them. But we could if</p> <p>10 asked.</p> <p>11 Q. And did you review any documents</p> <p>12 regarding Teva's DefOps system?</p> <p>13 A. Yes.</p> <p>14 Q. And I think you referenced them</p> <p>15 in paragraph 70 if you want to look at</p> <p>16 that.</p> <p>17 A. Thank you.</p> <p>18 (Document review.)</p> <p>19 Q. You did not apply the algorithm</p> <p>20 used by Teva's DefOps system to any of the</p> <p>21 data discussed in your report, correct?</p> <p>22 A. I'd have to look at the document,</p> <p>23 I'm sorry, I'm getting a little fuzzy</p> <p>24 today. But it appears, yes, we did not</p> <p>25 implement it because it was not -- we</p>	<p style="text-align: right;">Page 333</p> <p>1</p> <p>2 to look at which Bates numbers applies to</p> <p>3 which document.</p> <p>4 Q. But you don't recall reviewing</p> <p>5 any other documents besides the Cegedim,</p> <p>6 the Buzzeo/Cegedim compliance report?</p> <p>7 A. If I did, they're in my reliance,</p> <p>8 but not that I can recall sitting here and</p> <p>9 talking to you.</p> <p>10 Q. In paragraph 69, you state that</p> <p>11 your report or your report states that</p> <p>12 "Under the SORDS II program, orders by NDC</p> <p>13 that were more than three standard</p> <p>14 deviations above the customer's consents</p> <p>15 monthly mean were flagged by Teva."</p> <p>16 Do you see that?</p> <p>17 A. I do.</p> <p>18 Q. About halfway down that</p> <p>19 paragraph, you note that "Any order that is</p> <p>20 in excess of the three standard deviations</p> <p>21 above the mean is pended for further</p> <p>22 investigation."</p> <p>23 Do you see that?</p> <p>24 A. Yes, I see that quote. It's in</p> <p>25 quotes.</p>

Page 334

1

2 Q. "And that the monthly mean was

3 refreshed periodically."

4 Do you see that as well?

5 A. I do see that.

6 Q. Which you understood to mean that

7 "The mean and standard deviation were

8 calculated approximately twice per year

9 using the most recent six months of data."

10 Do you see that?

11 A. I do see that.

12 Q. When you say "six months of

13 data," what data are you referring to?

14 A. So that would be the chargeback

15 data that it would be applied to.

16 Q. And so your understanding is that

17 the system, excuse me, that the monthly

18 mean was refreshed periodically and that

19 the mean and standard deviation were

20 calculated approximately twice per year

21 using the most recent six months of

22 chargeback data?

23 A. So we applied it to the

24 chargeback data. And so when we're making

25 this assumption, we're assuming that the

Page 335

1

2 most recent six months, so let's say we're

3 doing the report on -- let's make it easy

4 on myself -- on February would be like

5 January and then the preceding six months

6 to that. And then that block would be

7 refreshed to include the next six months.

8 Q. Okay. Did you review any orders

9 that Teva had received?

10 A. Any orders that Teva had

11 received...

12 Not unless they appeared in the

13 chargeback data.

14 Q. And did you review any data that

15 Teva had about its orders that was

16 available to Teva at the time the orders

17 were made?

18 A. No. That would be outside of

19 this report.

20 Q. Did you determine whether the

21 Teva transactions flagged by your various

22 metrics, by various metrics in your report

23 were also flagged by the Teva defendants'

24 SOM systems?

25 MS. CONROY: Objection.

Page 336

1

2 A. I would not know.

3 Q. Did you look to see if those

4 transactions were flagged by those systems?

5 MS. CONROY: Objection.

6 A. Again, I wouldn't know. It was

7 not asked of me.

8 Q. And so you did not review any

9 documents regarding investigations of

10 pending orders in those systems; is that

11 accurate?

12 A. Not that I can recall. That

13 would have been outside of my expertise to

14 review those.

15 Q. I know we discussed this a little

16 bit before, but I want to make it clear for

17 the record.

18 On page 9 of your report, in

19 paragraph 22, you say that "The report

20 focuses specifically and exclusively on

21 manufacturers' anti-diversion and

22 suspicious order monitoring programs,"

23 correct?

24 A. Correct, it does state those

25 words.

Page 337

1

2 Q. And is that what you were

3 endeavoring to offer an opinion on, the

4 suspicious order monitoring programs?

5 MS. CONROY: Objection.

6 A. No. I think as we stated

7 earlier, and it's my intention to answer

8 this the same as I have before, but I was

9 asked to apply the known compliance metrics

10 to labelers' data including chargebacks and

11 IQVIA data.

12 Q. Okay. So you're not offering any

13 opinions today that the Teva defendants

14 failed to flag a potentially suspicious

15 order, correct?

16 A. Correct.

17 MS. CONROY: Objection.

18 A. Outside of my scope.

19 Q. Similarly, you're not offering

20 any opinions today or in your report that

21 the Teva defendants failed to detect and

22 report a suspicious order, correct?

23 A. Correct. That would be outside

24 of my expertise.

25 MR. HAMMOUD: All right. That's

Page 338

1  
 2 all the questions I have. Thank you  
 3 very much for your time.  
 4 THE WITNESS: Thank you.  
 5 THE VIDEOGRAPHER: The time is  
 6 5:25 p.m. We are now off the record.  
 7 (Recess is taken.)  
 8 (Keller Exhibit 20, Report of  
 9 Edward J. Buthusiem of Berkeley  
 10 Research Group, not Bates-stamped,  
 11 marked for identification, as of this  
 12 date.)  
 13 THE VIDEOGRAPHER: The time is  
 14 5:27 p.m. We are back on the record.  
 15 EXAMINATION BY  
 16 MR. GOLDSTEIN:  
 17 Q. Good afternoon, Ms. Keller. My  
 18 name is Josh Goldstein with the law firm of  
 19 Ropes & Gray. I represent Mallinckrodt,  
 20 LLC.  
 21 I've placed in front of you  
 22 what's been marked as Exhibit 20.  
 23 Do you recognize that document?  
 24 A. I do.  
 25 Q. Have you reviewed that document?

Page 339

1  
 2 A. I have.  
 3 Q. And for the record, what is that  
 4 document?  
 5 A. It is a report by Edward  
 6 Buthusiem, I'm not sure if I'm saying that  
 7 correctly.  
 8 Q. We can go with your pronunciation  
 9 for the first -- for today's deposition.  
 10 And when did you first review it?  
 11 A. I would say either in late May or  
 12 early June.  
 13 Q. Do you recall for how long you  
 14 reviewed it?  
 15 A. How long did it take me to read  
 16 it?  
 17 Q. Sure.  
 18 A. For as long as it takes to read.  
 19 I don't know, maybe an hour it takes to  
 20 read.  
 21 Q. Were you asked to offer any  
 22 opinions based on Mr. Buthusiem's report?  
 23 A. No.  
 24 Q. Do you intend to offer an opinion  
 25 at trial regarding his report?

Page 340

1  
 2 A. I'm not certain.  
 3 Q. Have you conducted any additional  
 4 analysis as a result of your review of  
 5 Mr. Buthusiem's report?  
 6 A. Yes.  
 7 Q. Could you describe that, please?  
 8 A. I reviewed his work and our work  
 9 as well.  
 10 Q. And when you say his work and  
 11 your work, could you elaborate?  
 12 A. The examples that he cites in his  
 13 report.  
 14 Q. Did you review the materials --  
 15 strike that.  
 16 Did you just review the report  
 17 that's been placed in front of you or did  
 18 you review materials he relied on?  
 19 A. I also reviewed his reliance.  
 20 Q. I think this is probably  
 21 encompassed in what I've already asked, but  
 22 if I'm understanding you correctly, you  
 23 don't intend to supplement your report as a  
 24 result of your review of his report?  
 25 A. Not that I'm aware of at this

Page 341

1  
 2 time.  
 3 Q. Okay. Did you form a general  
 4 impression of his report?  
 5 A. No.  
 6 Q. Do you recall generally the main  
 7 points that Mr. Buthusiem makes in his  
 8 report?  
 9 A. I do.  
 10 Q. What are they?  
 11 A. He discusses chargebacks to a  
 12 great degree and then discusses some of our  
 13 processing of the data. I would say not  
 14 even processing, more our analysis of the  
 15 data. And then I would say a third piece  
 16 would be to describe how Mallinckrodt's --  
 17 I don't know how to word this  
 18 appropriately, forgive me, it's getting  
 19 late in the day -- to describe how  
 20 Mallinckrodt views using its different data  
 21 sets available to them, to the labeler.  
 22 I'm sorry if that's not clear.  
 23 Q. I think I understand you.  
 24 Which data sets are you referring  
 25 to in particular?

Page 342

1  
2 A. Specifically he brings up a sales  
3 data set that I thought was interesting to  
4 review.  
5 Q. Sorry to go back to this, but  
6 when you -- have you reviewed his report  
7 since the initial time that you reviewed it  
8 in late May or early June?  
9 A. Yes.  
10 Q. Did you review it in preparation  
11 for the deposition today?  
12 A. Yes.  
13 Q. Do you remember the last time you  
14 reviewed it?  
15 A. Last night.  
16 Q. Now of the three key points that  
17 you just identified, or I don't think you  
18 used the word "key," but the three main  
19 points, I believe is what my question asked  
20 for, do you disagree with any of the points  
21 that Mr. Buthusiem made?  
22 A. I do. I think that -- I do.  
23 I'll just leave it at that.  
24 Q. Okay. Could can you elaborate?  
25 A. I think he misunderstood our

Page 343

1  
2 report and what we were trying to do.  
3 Q. And what do you mean by that?  
4 What makes you think he misunderstood the  
5 report?  
6 A. So he takes to task that we  
7 incorrectly include some orders in our  
8 analysis.  
9 What I stated and intended to do  
10 was to provide examples of chargeback  
11 requests that included NDCs that were part  
12 of peculiar orders.  
13 Q. I think maybe -- strike that.  
14 So I'd like to kind of walk  
15 through some of the statements in his  
16 report and maybe sort of hone in on where  
17 the disagreements might be.  
18 A. Sure.  
19 Q. So just generally speaking, what  
20 is your understanding of the purpose of  
21 chargeback data?  
22 A. As I think I state in the report,  
23 it helps protect the labeler from -- well,  
24 actually, let me make sure I state it  
25 right. I got it right here.

Page 344

1  
2 (Document review.)  
3 A. "Submitted by the distributors to  
4 labelers to protect distributors from  
5 profit loss when drugs are sold at" -- "to  
6 a buyer at less than the distributor paid  
7 for them."  
8 Q. Did you understand it to be a  
9 type of financial reconciliation mechanism?  
10 A. If you want to call it that.  
11 Q. You wouldn't take issue with that  
12 characterization?  
13 A. Yeah, I understand it to be like  
14 maybe like in an colloquial term, a rebate  
15 or something like that. Maybe that --  
16 that's probably not the right word to use,  
17 especially in pharmaceuticals because I  
18 think that means something different there,  
19 but it's helped kind of make somebody  
20 whole. I think I've heard that phrase  
21 used.  
22 Q. Understood.  
23 So let me frame it this way and  
24 see if you agree or disagree?  
25 Is it fair to say that

Page 345

1  
2 distributors provide chargeback data to  
3 manufacturers in order to be compensated  
4 for the difference between the price a  
5 distributor sells the product to a pharmacy  
6 and the price that the distributor paid the  
7 manufacturer for that product?  
8 MS. CONROY: Objection.  
9 A. I think that's in the same realm  
10 of what I mean to say in 33 but, sure, the  
11 definition is what it is.  
12 Q. So just to be clear, you don't  
13 take issue with the definition I just  
14 provided?  
15 MS. CONROY: Objection.  
16 A. I wouldn't know exactly the  
17 correct definition of a chargeback. That's  
18 not my area of expertise. But it sounds  
19 good to me sitting here.  
20 Q. Do you have an understanding of  
21 whether manufacturers purchase chargeback  
22 data from distributors or whether that data  
23 is provided to manufacturers by  
24 distributors?  
25 A. I mean, it depends on how you



<p style="text-align: right;">Page 346</p> <p>1</p> <p>2 define the word "purchase," but I don't</p> <p>3 really know how they come to get, but I</p> <p>4 know that they have that data.</p> <p>5 Q. So you're not aware one way or</p> <p>6 the other whether manufacturers purchase</p> <p>7 chargeback data from distributors?</p> <p>8 MS. CONROY: Objection.</p> <p>9 A. Yes, that would be outside of my</p> <p>10 expertise of how they came to get the data.</p> <p>11 I just know what I was given.</p> <p>12 Q. Now a chargeback request is</p> <p>13 submitted by the distributor to a</p> <p>14 manufacturer after the distributor has</p> <p>15 already shipped the order to the pharmacy</p> <p>16 or whatever the downstream customer is; is</p> <p>17 that right?</p> <p>18 A. I don't know for certain because</p> <p>19 I'm not an expert in chargebacks.</p> <p>20 Q. Is that consistent with your</p> <p>21 understanding of how chargebacks work?</p> <p>22 A. I would think so, yes.</p> <p>23 Q. And a chargeback request is only</p> <p>24 submitted by a distributor to a</p> <p>25 manufacturer for sales that a distributor</p>	<p style="text-align: right;">Page 348</p> <p>1</p> <p>2 very tiny, and I assumed that it was just</p> <p>3 an error in the data.</p> <p>4 Q. Okay. Understood.</p> <p>5 And that is true regardless of --</p> <p>6 strike that.</p> <p>7 That's true even in situations</p> <p>8 where a company is selling its own generic</p> <p>9 product of another manufacturer's branded</p> <p>10 products? Is that your understanding?</p> <p>11 A. Help me get a better question.</p> <p>12 Q. Sure.</p> <p>13 Do you have an understanding of</p> <p>14 the difference between a generic</p> <p>15 manufacturer and a branded manufacturer?</p> <p>16 A. I understand that some drugs are</p> <p>17 generic and some drugs are brand name, yes.</p> <p>18 Q. And what is your -- can you</p> <p>19 describe that understanding?</p> <p>20 A. I mean, I don't really -- I don't</p> <p>21 have expertise or deep knowledge in what</p> <p>22 goes in behind that, but I understand that</p> <p>23 when I match it to an FDA file, some have a</p> <p>24 brand name B next to them and some drugs,</p> <p>25 NDCs, have a G for generic. I don't know</p>
<p style="text-align: right;">Page 347</p> <p>1</p> <p>2 made to a distributor's customer; is that</p> <p>3 fair to say?</p> <p>4 A. I think that's fair to say.</p> <p>5 Q. And of sales that a distributor</p> <p>6 makes to a distributor's customer, not</p> <p>7 every sale is eligible for a chargeback</p> <p>8 with respect to the manufacturer; is that</p> <p>9 right?</p> <p>10 A. Yes, I think we state that in our</p> <p>11 report that some percentage, depending on</p> <p>12 the labeler, are submitted for chargebacks</p> <p>13 and some are not.</p> <p>14 Q. Apologies. I think you might</p> <p>15 have testified to this already, but a</p> <p>16 manufacturer only has chargeback data for</p> <p>17 sales to a distributor of the</p> <p>18 manufacturer's own product. Is that your</p> <p>19 understanding?</p> <p>20 A. Generally, that's my</p> <p>21 understanding. I do remember seeing, and</p> <p>22 it may have been an invalid NDC code issue,</p> <p>23 some crossover between labelers where NDCs</p> <p>24 of one labeler were in another labeler's</p> <p>25 chargeback request. But they were very,</p>	<p style="text-align: right;">Page 349</p> <p>1</p> <p>2 if that's actually how it shows up in the</p> <p>3 data, but in simplest terms, that's -- I do</p> <p>4 understand that there's be a distinction</p> <p>5 between the two.</p> <p>6 Q. Okay. And so as far as you know,</p> <p>7 the manufacturer of a generic product only</p> <p>8 gets chargeback data for that product;</p> <p>9 doesn't get chargeback data from any other</p> <p>10 manufacturer?</p> <p>11 MS. CONROY: Objection.</p> <p>12 A. I would say in the data that I</p> <p>13 saw and used, I only saw manufacturer's own</p> <p>14 data. And it generally reflected the NDC</p> <p>15 codes that I understood them to label based</p> <p>16 off of the labeler mappings from FDA and</p> <p>17 DEA.</p> <p>18 Q. Okay. I'd like to ask you to</p> <p>19 turn to paragraph 13 of Mr. Buthusiem's</p> <p>20 report. It's on page 5.</p> <p>21 (Witness complies.)</p> <p>22 Q. And what I'd like to do is walk</p> <p>23 through some of the statements in this</p> <p>24 report.</p> <p>25 So the first sentence,</p>

Page 350

1  
2 Mr. Buthusiem writes, "Across the  
3 pharmaceutical industry, chargeback  
4 requests from distributors to manufacturers  
5 do not indicate what specific product  
6 inventory, i.e. which particular bottles or  
7 packages, the distributor used to fulfill  
8 the sale to the downstream registrant."  
9 Do you see that?  
10 A. I do.  
11 Q. Do you agree with that statement?  
12 A. I really wouldn't know. It's  
13 outside of my expertise.  
14 Q. So you have no reason to disagree  
15 with that statement?  
16 A. I wouldn't have the expertise to  
17 agree or disagree.  
18 Q. Okay. Skipping down to the  
19 sentence in the middle of the paragraph  
20 that starts "As such," do you see that?  
21 A. I do.  
22 Q. And the underlying portion reads.  
23 "The manufacturer cannot use chargeback  
24 data to trace a downstream sale back to the  
25 specific original direct manufacturer to

Page 351

1  
2 distributor sale or sales."  
3 Do you see that?  
4 A. I do see that.  
5 Q. And do you agree with that  
6 statement?  
7 A. I do not.  
8 Q. Which part do you disagree with?  
9 A. Which part? I'm sorry. Ask me a  
10 different question or --  
11 Q. Sure.  
12 What do you disagree with about  
13 that statement?  
14 A. So I believe in my report we do  
15 trace the chargeback data back to the --  
16 for a second.  
17 So he refers to sales data. I  
18 didn't review sales data. So I actually  
19 couldn't be certain if you could trace a  
20 chargeback back to sales data.  
21 What I had available to me was  
22 chargeback data and peculiar order data.  
23 Q. Just so the record is clear, what  
24 sales data are you referring to that  
25 Mr. Buthusiem reviewed that you said you

Page 352

1  
2 didn't review?  
3 A. There is a cite here. The direct  
4 sales transaction, 1998 to -- that's in  
5 footnote 9, MNKT1\_0007897646.  
6 Q. Okay. And that's data that you  
7 did not review in connection with your  
8 report?  
9 A. That is correct.  
10 Q. And have you reviewed it since --  
11 have you ever reviewed that data?  
12 A. I have.  
13 Q. You reviewed it after you  
14 prepared your report?  
15 A. I did.  
16 Q. So now that that data has been  
17 made available to you, does it change your  
18 opinions at all that you offer in your  
19 expert report?  
20 A. I'm really not sure at this time.  
21 I haven't fully completed my analysis.  
22 Q. Is it fair to say you're in the  
23 process of making that determination?  
24 A. I don't know if I will or will  
25 not. I just don't know.

Page 353

1  
2 Q. But have you begun that analysis?  
3 A. I would say I've reviewed the  
4 data sources that he has used and used his  
5 report, and that's where we are right now.  
6 Q. At this time, do you have any  
7 reason to disagree with -- strike that.  
8 At this time, are there any  
9 opinions that you intend to offer based on  
10 your review of the direct sales data?  
11 A. I do not plan to offer opinions  
12 today on the direct sales data or -- and I  
13 don't know if I will.  
14 MR. GOLDSTEIN: I'm just going to  
15 note for the record that defendants  
16 will reserve all rights in connection  
17 with any late-disclosed opinions,  
18 particularly those opinions that  
19 respond to Mr. Buthusiem's report.  
20 BY MR. GOLDSTEIN:  
21 Q. Bear with me one second.  
22 A. Take your time.  
23 Q. So you testified just now that  
24 you couldn't be certain if it's possible to  
25 trace a chargeback to the -- trace a

<p style="text-align: right;">Page 354</p> <p>1</p> <p>2 chargeback from the sale from the</p> <p>3 manufacturer to a distributor and then from</p> <p>4 a distributor to the distributor's</p> <p>5 downstream customer.</p> <p>6 Do you recall that?</p> <p>7 A. So I think what I was saying is</p> <p>8 because I haven't fully reviewed the sales</p> <p>9 data, I don't know what would be possible.</p> <p>10 So that was -- I think I started making a</p> <p>11 statement but needed to clarify that.</p> <p>12 Because I haven't used this direct sales</p> <p>13 data and done this analysis, I don't know</p> <p>14 the answer.</p> <p>15 Q. Okay. At this point, you're not</p> <p>16 aware of any information in the direct</p> <p>17 sales data that would enable you to trace a</p> <p>18 manufacturer's sale to a distributor, to</p> <p>19 then a distributor's sale to a downstream</p> <p>20 customer?</p> <p>21 A. I'm really not prepared to answer</p> <p>22 that either way right now.</p> <p>23 Q. So I was just asking if you're</p> <p>24 aware of any information at this point.</p> <p>25 A. I just -- I've reviewed the file</p>	<p style="text-align: right;">Page 356</p> <p>1</p> <p>2 there's any information that you've come</p> <p>3 across to date that would enable you to</p> <p>4 trace the manufacturer's sale to a</p> <p>5 distributor, to then the sale by the</p> <p>6 distributor to a downstream customer?</p> <p>7 MS. CONROY: Objection. Apart</p> <p>8 from her report?</p> <p>9 MR. GOLDSTEIN: Based on her</p> <p>10 review of the Mallinckrodt direct sales</p> <p>11 data, which is --</p> <p>12 MS. CONROY: That's what you're</p> <p>13 your question is about, the</p> <p>14 Mallinckrodt direct --</p> <p>15 MR. GOLDSTEIN: Correct.</p> <p>16 MS. CONROY: Okay. Why don't you</p> <p>17 ask it again, then.</p> <p>18 MR. GOLDSTEIN: Correct.</p> <p>19 MS. CONROY: That's what's</p> <p>20 confusing.</p> <p>21 MR. GOLDSTEIN: Right. So I</p> <p>22 understand the testimony to be that</p> <p>23 Ms. Keller can't say whether the direct</p> <p>24 sales data that Mr. Buthusiem reviewed</p> <p>25 would enable or would not enable</p>
<p style="text-align: right;">Page 355</p> <p>1</p> <p>2 fairly quickly. I'm just really not</p> <p>3 prepared to say what's in the file or what</p> <p>4 data points are there or what would be</p> <p>5 possible to review. So I just am not</p> <p>6 comfortable with saying one way or the</p> <p>7 other what is possible or not possible.</p> <p>8 Q. Oh, I understand. I think my</p> <p>9 question is a little different.</p> <p>10 It's simply, at this point in</p> <p>11 time sitting here today, if you are aware</p> <p>12 of any information that would enable you to</p> <p>13 trace manufacture's sale to a distributor,</p> <p>14 trace that order from the manufacturer to</p> <p>15 the distributor to the downstream customer?</p> <p>16 A. So, again, the data that I used</p> <p>17 in my report was peculiar orders and</p> <p>18 chargebacks. The data that's mentioned</p> <p>19 here that I've only briefly reviewed is</p> <p>20 sales. So I can't offer an opinion or a</p> <p>21 statement at this time about sales.</p> <p>22 Q. So what I'm trying to understand</p> <p>23 is that based on your review thus far,</p> <p>24 understanding that it's incomplete review</p> <p>25 of the Mallinckrodt direct sales data, if</p>	<p style="text-align: right;">Page 357</p> <p>1</p> <p>2 someone to trace the order all the way</p> <p>3 from the manufacturer to the downstream</p> <p>4 customer. And so that's where I'm</p> <p>5 going with that.</p> <p>6 MS. CONROY: Okay.</p> <p>7 BY MR. GOLDSTEIN:</p> <p>8 Q. So would you like me to repeat</p> <p>9 the question?</p> <p>10 A. Yes, please.</p> <p>11 Q. So based on your review thus far</p> <p>12 of the Mallinckrodt direct sales data that</p> <p>13 Mr. Buthusiem cites in his report, do you</p> <p>14 have any -- are you aware of any</p> <p>15 information in that data that would enable</p> <p>16 you to trace a sale from a manufacturer, to</p> <p>17 a distributor, to then the downstream</p> <p>18 customer?</p> <p>19 A. I mean, again, that is a very</p> <p>20 long chain that you've outlined here. I</p> <p>21 would need to fully review it to make -- to</p> <p>22 make an actual assertion.</p> <p>23 I mean, if there's NDC codes in</p> <p>24 there, that's where we would start. But</p> <p>25 beyond that, I don't -- I'm not prepared to</p>

Page 358

1  
2 talk about that right now.  
3 Q. So I think I've asked this  
4 question about five times.  
5 All I'm asking is what you're  
6 aware of today, not what you could ever  
7 possibly be aware of at some future point  
8 down the road.  
9 So as far as, as you sit here  
10 today what you're aware of and not aware  
11 of, it sounds like you're not aware of any  
12 information that would enable you to trace  
13 an order from a manufacturer, to a  
14 distributor, to the downstream customer?  
15 MS. CONROY: Objection.  
16 A. I'm not going to say aware or not  
17 aware because I haven't fully reviewed the  
18 data set. If you want to pull it out, I'd  
19 be happy to look at it right now, but I  
20 don't remember what column headers are in  
21 there. I don't know what fields are in  
22 there. I just -- those are things that I  
23 would need to know to be aware or not aware  
24 and I just -- I would be happy to look at  
25 it right now if you want to pull it up on a

Page 359

1  
2 computer, but...  
3 Q. Sitting here today, you don't  
4 recall if you're aware or not of whether  
5 there is any information in that direct  
6 sales data that would change your analysis?  
7 A. So sitting here, I do not have  
8 the familiarity with the data set that  
9 would allow me to answer the question  
10 either way, that I am aware or unaware,  
11 because I would just have to look at the  
12 data set more closely to be able to answer  
13 the full question of being able to trace  
14 from here to here to here.  
15 Q. Okay. Well, let me move on and  
16 ask a slightly different question. I think  
17 everyone is growing weary of that one.  
18 If you turn to your report,  
19 paragraph 158. It's on page 84.  
20 A. Yes.  
21 Q. And there, you reference roughly  
22 2,900, I think if you look at table 74,  
23 it's 2,860 peculiar orders, or to be clear,  
24 orders that Mallinckrodt had deemed  
25 peculiar based on its own monitoring system

Page 360

1  
2 that involved distributors that shipped the  
3 same opioid product purchased in a peculiar  
4 transaction to buyers in either Summit  
5 County or Cuyahoga County within 30 days.  
6 Do you see that reflected in your  
7 report?  
8 A. I do.  
9 Q. Okay. And so my question is,  
10 sitting here today, based on whatever  
11 you've reviewed to date, can you state with  
12 100 percent certainty that any of those  
13 2,860 orders that are referenced in table  
14 74 were shipped themselves into Cuyahoga or  
15 Summit County?  
16 A. So the question is -- can you  
17 state it a little bit more succinctly for  
18 me?  
19 Q. Sure. Let me try again.  
20 Can you state with 100 percent  
21 certainty that any of the 2,860 orders that  
22 are identified in table 74 -- you see those  
23 orders that I'm talking about?  
24 A. I do.  
25 Q. Okay. If any of those orders

Page 361

1  
2 were definitively shipped into Cuyahoga or  
3 Summit County as opposed to shipped  
4 somewhere else?  
5 A. So those orders contained an NDC  
6 product that was deemed peculiar at some  
7 point by Mallinckrodt in the previous 30  
8 days that went to a Summit or Cuyahoga  
9 County buyer.  
10 Q. So your testimony sitting here  
11 today is that you can definitively trace  
12 the orders that were placed by a  
13 distributor to Mallinckrodt, these 2,860  
14 orders, that Mallinckrodt -- let me back  
15 up.  
16 Mallinckrodt, your understanding  
17 is that Mallinckrodt shipped those orders  
18 to various distributors, correct?  
19 A. So you've got two points in  
20 there. That Mallinckrodt shipped to those  
21 distributors or -- I'm sorry, I just don't  
22 really follow your question.  
23 Q. I'll start over. That's fine.  
24 So the 2,860 peculiar orders that  
25 are identified in table 74, your



<p style="text-align: right;">Page 362</p> <p>1 2 understanding is that those orders were 3 placed by a distributor to Mallinckrodt, 4 correct? 5 A. Yes. 6 Q. And as far as you know, 7 Mallinckrodt shipped those orders to 8 various distributors, correct? 9 A. I would -- yes, I think because 10 these are peculiar orders. So at some 11 point, yes, I would assume that that -- 12 they were deemed peculiar so -- I don't -- 13 let me state this more completely. And I'm 14 sorry, my brain is getting fuzzy. 15 They appear in the peculiar order 16 data for Mallinckrodt, and these are the 17 distributors that are in that data. 18 Whether or not those were 19 actually shipped or unshipped, I couldn't 20 answer as to whether, whether that 21 happened. 22 Q. So I guess now I'm a little 23 confused. I thought that your report is -- 24 in your report, I thought you're saying 25 that these are orders that were shipped</p>	<p style="text-align: right;">Page 364</p> <p>1 2 Q. Okay. So let me go back to my -- 3 go back a couple of questions which is, as 4 far as you know, the way the supply chain 5 works is, distributor places an order with 6 a manufacturer, we established that. The 7 manufacturer ships the order to the 8 distributor? 9 A. Yes. 10 Q. Okay. So once the distributor 11 has obtained the order, the distributor has 12 inventory of that product, whatever product 13 was contained in that order. 14 Is that your understanding? 15 A. I think I've seen data that 16 reflects what you're trying to say, yeah. 17 Q. Do you have an understanding 18 of -- I guess I should put it this way: Do 19 you have an understanding of how an order 20 placed by a distributor to a manufacturer 21 ends up -- well, strike that. 22 Do you have an understanding of 23 how the 2,860 orders that you identify in 24 table 74 were shipped into Cuyahoga or 25 Summit County as you have opined?</p>
<p style="text-align: right;">Page 363</p> <p>1 2 into Cuyahoga or Summit County; is that 3 right? 4 A. So that's the chargeback 5 component. We looked at chargeback data 6 and peculiar order data. 7 Q. Okay. 8 A. So to the extent that a 9 chargeback existed, one has to make the 10 assumption that it made it there, that the 11 product made it there. 12 Q. Well, let me follow up with 13 something you said. 14 Are you aware of any 15 identification code or any data contained 16 within chargeback data, the peculiar order 17 data, or any other data that links a 18 peculiar order and a chargeback? 19 A. Well, yes. 20 Q. What data is that? 21 A. So I mean, we'd have to consult 22 how we did this in the code, but there's -- 23 you would need the NDC code of the 24 products, as well as the distributor that 25 that product went through.</p>	<p style="text-align: right;">Page 365</p> <p>1 2 MS. CONROY: Objection. 3 A. How they were shipped, like what 4 was the method that they arrived in Summit 5 County? 6 Q. Yes. They were shipped there by 7 a distributor into Summit or Cuyahoga 8 County. 9 Is that your opinion? 10 A. I guess I don't really understand 11 the question. I'm sorry if I'm -- I'm not 12 trying to be obstinate. I just don't 13 understand. Are you asking me -- I just 14 don't understand quite what you're asking 15 me. 16 Q. What I'm getting at is that, once 17 a, once product is shipped -- I'll start 18 over. 19 Do you have an understanding of 20 whether distributors that receive products 21 from manufacturers typically hold inventory 22 of the product that they are purchasing 23 beyond the single order that was purchased? 24 A. I have no expertise in what the 25 inventory practices are of distributors.</p>



Page 366

1  
2 Q. So you don't know if, for  
3 example, if a distributor purchases --  
4 places an order with Mallinckrodt for one  
5 of its products, you don't know if -- and  
6 Mallinckrodt ships it to that distributor,  
7 the product that was purchased, you don't  
8 know if the distributor would have other of  
9 Mallinckrodt's products already in its  
10 inventory at the time it places that order?  
11 A. Correct. I'm not an expert in  
12 supply chain, nor am I an expert in  
13 distributor LIFO or any of their practices  
14 there, nor do I -- you had another point in  
15 there, but, no, that would be outside of my  
16 expertise. Actually, nor was I given data  
17 on those practices.  
18 Q. Okay. And if a distributor at  
19 the time it placed an order that the  
20 distributor deemed -- that that -- strike  
21 that.  
22 If a distributor in its inventory  
23 had product from Mallinckrodt that was  
24 purchased via multiple orders --  
25 Are you with me so far?

Page 367

1  
2 A. Yeah.  
3 Q. Okay. If that was the case, do  
4 you have an understanding of whether it  
5 would be possible for Mallinckrodt to  
6 determine whether any -- or whether  
7 chargeback data provided to Mallinckrodt  
8 would reflect whether any product that's  
9 ultimately shipped into Cuyahoga or Summit  
10 County is from a particular order that was  
11 placed to Mallinckrodt?  
12 A. I'm sorry, I'm rereading your  
13 question here to make sure I understand.  
14 Q. Take your time.  
15 MS. CONROY: Object to the  
16 question.  
17 A. I just don't... I don't really  
18 know how to answer this question because  
19 I've got chargeback data, correct, but as  
20 we've discussed, I haven't reviewed the  
21 sales data, and I have peculiar orders  
22 data.  
23 But I think all of that is a  
24 little bit mixed together in this question,  
25 so I'm not quite sure what you're trying to

Page 368

1  
2 ask me. And I'm sorry, it might be that  
3 it's late in the day.  
4 Q. Well, let's say a distributor has  
5 two orders in its inventory worth of the  
6 same -- the same Mallinckrodt products,  
7 okay?  
8 A. Okay. Let's go with that. This  
9 is good.  
10 Q. One order has been deemed by  
11 Mallinckrodt to be peculiar.  
12 A. Okay.  
13 Q. The other has not.  
14 A. Okay.  
15 Q. The distributor then ships some  
16 portion of its inventory of that  
17 Mallinckrodt product into -- to a pharmacy  
18 located in Cuyahoga or Summit County, okay?  
19 A. Okay.  
20 Q. Are you aware of any way to  
21 determine, for Mallinckrodt to determine  
22 through the use of chargeback data whether  
23 any of the product that was shipped into  
24 Cuyahoga or Summit County was part of what  
25 had been flagged as peculiar?

Page 369

1  
2 A. Well, yes. I think that's what  
3 we do in our analysis where that -- some of  
4 the -- so an order of an NDC product that  
5 was ultimately shipped to Summit or  
6 Cuyahoga County resulted in a chargeback  
7 request within the next 30 days.  
8 Q. But you, sitting here today,  
9 can't say with certainty whether the  
10 chargeback request that was sent was for  
11 product that was flagged as peculiar or it  
12 was from other product that was in the  
13 distributor's inventory that was not  
14 flagged as peculiar?  
15 MS. CONROY: Objection.  
16 A. So because there was many  
17 products shipped after which it was being  
18 deemed peculiar to a distributor, you're  
19 saying because you continued shipments  
20 after they were deemed peculiar, that  
21 that -- you're trying to ask me if that  
22 deems it impossible to trace a chargeback?  
23 Q. No. I'm asking if the  
24 distributor requests a chargeback from  
25 Mallinckrodt -- strike that. Let me move

Page 370

1  
2 on.  
3 You selected a 30-day cutoff as  
4 part of your analysis of Mallinckrodt's  
5 peculiar orders?  
6 A. Sure.  
7 Q. How did you determine that as the  
8 window of time?  
9 A. So in reviewing the SOMS  
10 documentation, many algorithms reflected a  
11 30-day lookback. It seemed an appropriate  
12 lookback period. And also looking at  
13 chargeback requests, some companies, I'm  
14 sorry, some distributors submitted them,  
15 what appeared to be maybe on weekly basis,  
16 some on a daily basis, some on monthly  
17 basis. It was all over the place. So the  
18 30 days was chosen based off of those  
19 factors.  
20 Q. Okay. And without consideration  
21 of any distributors's inventory management  
22 practices, correct?  
23 A. As I stated earlier, I'm not an  
24 expert in inventory management, nor did I  
25 review those types of documents.

Page 371

1  
2 Q. Okay. So the answer is, yes,  
3 that is correct, that you did not consider  
4 distributors's inventory management  
5 practices when setting the 30-day cutoff?  
6 A. I would consider inventory  
7 management practices to be out of my  
8 expertise. And so the 30-day cutoff was  
9 based off of our review of other documents.  
10 Q. Okay. Now if you turn to page 8  
11 of Mr. Buthusiem report. You recall that  
12 Mr. Buthusiem states that some of the --  
13 you made some errors with respect to the  
14 code in your report.  
15 Do you recall that?  
16 A. I do recall reading that.  
17 Q. And have you gone back and looked  
18 at whether those errors in fact occurred?  
19 A. I think he's just  
20 misunderstanding what we tried to do in the  
21 report.  
22 Q. And how so?  
23 A. We show orders that contained NDC  
24 products that were deemed in a peculiar  
25 report -- that were deemed peculiar.

Page 372

1  
2 Q. And is that true even if --  
3 strike that.  
4 Is it your testimony that all of  
5 the 2,860 peculiar orders had involved  
6 situations where the distributor who made  
7 the chargeback request was the same as the  
8 distributor who placed the peculiar order?  
9 A. I think the 2,860 peculiar orders  
10 that we identified involved different  
11 distributors, not just one.  
12 Q. Right.  
13 What I'm saying is, for any --  
14 let's just pick one of those 2,860 peculiar  
15 orders.  
16 For that order, are you aware of  
17 situations in which of those 2,860 orders,  
18 any one of them individually, the  
19 distributor who placed -- who made the  
20 chargeback request was different from the  
21 distributor who was identified as having  
22 placed a peculiar order?  
23 A. So for us -- to appear in this  
24 list, they had to have of shipped -- this  
25 list contains orders that were traced to

Page 373

1  
2 Summit and Cuyahoga after which an NDC  
3 product within that order was deemed  
4 peculiar.  
5 Q. Would you have included in your  
6 list of 2,860 orders any order in which the  
7 distributor who placed the chargeback  
8 request to Mallinckrodt was different from  
9 the distributor who was identified as  
10 having placed a peculiar order initially  
11 from Mallinckrodt?  
12 A. I mean, there's lots going into  
13 that calculation, whether or not it was in  
14 the 30 days of the same order, if it was on  
15 the same day, if it was the same  
16 distributor, if it was the same NDC code.  
17 There is a lot that goes into that  
18 analysis.  
19 Q. But your analysis attempts to  
20 link peculiar order placed by distributor  
21 to Mallinckrodt with a chargeback request  
22 that was provided by a distributor to  
23 Mallinckrodt reflecting an order that was  
24 shipped into Summit or Cuyahoga; is that  
25 right?

Page 374

1  
2 A. So, yes, to the extent that the  
3 chargeback reflects the shipment and the  
4 peculiar order is the other half of the  
5 equation, yes. I'm not trying to state  
6 that the peculiar orders were shipped.  
7 Q. Let me ask it this way:  
8 Paragraph 158 of your report, you say, "I  
9 identified around 2,900 peculiar orders  
10 that involved distributors that shipped the  
11 same opioid product purchased in the  
12 peculiar transaction to buyers in either  
13 Summit or Cuyahoga County within 30 days."  
14 Okay?  
15 A. I state that.  
16 Q. Okay. And the next sentence  
17 says, "With chargeback data, Mallinckrodt  
18 was able to see where a peculiar orders  
19 went."  
20 Do you see that?  
21 A. I state that as well, yes.  
22 Q. Okay. So in order for -- in  
23 order to be included in one of these 2,860  
24 peculiar orders, it would, by definition,  
25 need to be an order that was placed by a

Page 375

1  
2 distributor to manufacturer or that was  
3 deemed peculiar by Mallinckrodt and then  
4 the same distributor submitted a chargeback  
5 request to Mallinckrodt for what you're  
6 saying reflects that same order, right?  
7 A. It's just it's complicated,  
8 right, because we're looking at the time  
9 periods and NDC codes.  
10 Q. I really don't think it's that  
11 complicated. I think it's a simple  
12 question that you have a distributor where  
13 you're saying the distributor, the same  
14 distributor placed an order from  
15 Mallinckrodt, shipped it into Cuyahoga or  
16 Summit County and then submitted a  
17 chargeback request to Mallinckrodt.  
18 So all I'm asking is, is it, by  
19 definition, the same distributor that  
20 placed the order and submitted the  
21 chargeback request?  
22 That's a simple "yes" or "no"  
23 question.  
24 A. Yes. I think our code would  
25 reflect that.

Page 376

1  
2 Q. Okay. And so if your code  
3 reflected -- in there was an error in your  
4 code whereby you had a distributor, whereby  
5 you had different distributors, that would  
6 be an error in your code?  
7 If there was a different  
8 distributor who placed the order and  
9 submitted the chargeback request, that  
10 could not be for the same order?  
11 A. I think the code shows that it  
12 has a 30-day window, an order that contains  
13 the NDC product through that distributor.  
14 Q. The same distributor?  
15 A. I would think so, yes.  
16 Q. Okay. And if there was an order  
17 where it wasn't the same distributor, that  
18 would reflect an error in your code?  
19 MS. CONROY: Objection.  
20 A. I would have to look at the full  
21 facts behind that before I'd say whether or  
22 not it would.  
23 Q. It should not have been included  
24 in the 2,860 peculiar orders in table 74?  
25 MS. CONROY: Objection.

Page 377

1  
2 A. I would like to look at the order  
3 before making an assertion as to whether  
4 or not it would be an error or not.  
5 Q. It's possible that an order  
6 placed by a distributor and then a  
7 chargeback request submitted by a different  
8 distributor could be the same order  
9 reflected in these 2,860 in table 74?  
10 A. I mean, I'm not going to talk  
11 about what's possible and not possible  
12 without looking at the data.  
13 MR. GOLDSTEIN: I'll pass the  
14 witness. I'll reserve my rights. I  
15 don't think I've gotten responsive  
16 answers to my questions.  
17 THE VIDEOGRAPHER: The time is  
18 6:12 p.m. We are now off the record.  
19 (Recess is taken.)  
20 THE VIDEOGRAPHER: The time is  
21 6:17 p.m. We are back on the record.  
22 EXAMINATION BY  
23 MR. HYNES:  
24 Q. Good evening, Ms. Keller. My  
25 name is Paul Hynes. I represent CVS

Page 378

1  
2 Indiana, LLC and CVS RX Services, Inc.  
3 I just have a few questions about  
4 Section L of your report where you address  
5 certain pharmacies.  
6 So if you want to turn to those  
7 pages, that would be helpful?  
8 A. Sure.  
9 Q. I want to first turn your  
10 attention to paragraph 127 on page 63.  
11 A. I am there.  
12 Q. In the first sentence, you say  
13 "The section that follows analyzes  
14 suspicious pharmacies about which labelers  
15 could have known and reported."  
16 Do you see that?  
17 A. I do.  
18 Q. Okay. What do you mean by  
19 "suspicious pharmacies"?  
20 A. So I think I had been asked this  
21 question before, and I intend to answer it  
22 the same way as before, but when I say  
23 "suspicious," I mean they've triggered the  
24 compliance metrics that we applied to the  
25 data.

Page 379

1  
2 Q. Okay. So you're not saying that  
3 any labeler had an obligation to report  
4 those pharmacies to the DEA?  
5 A. That would be outside of my  
6 expertise.  
7 Q. Okay. Do you intend to offer an  
8 opinion at trial that these pharmacies were  
9 suspicious?  
10 A. Not beyond how I've defined  
11 "suspicious" here today.  
12 Q. Okay. So your opinion about  
13 these pharmacies at trial would be limited  
14 to the fact that they had orders that hit  
15 on one of the compliance metrics that you  
16 were asked to use?  
17 A. That would be a correct  
18 characterization.  
19 Q. Okay. Thank you.  
20 In reviewing the orders placed by  
21 these pharmacies or the shipments made to  
22 them, did you consider whether there were  
23 any legitimate reasons to explain their  
24 purchasing or ordering habits?  
25 A. That would be outside of my

Page 380

1  
2 expertise.  
3 Q. Okay. So you didn't consider the  
4 location of the pharmacies?  
5 A. That would be outside of what I  
6 was asked to do.  
7 Q. Okay. Did you consider whether  
8 they're located near any medical  
9 facilities?  
10 A. I think there is one pharmacy  
11 where we show -- I think for -- in the New  
12 Choice one, we show another pharmacy,  
13 Cleveland Clinic, to demonstrate those that  
14 are near medical facilities. But beyond  
15 that example, I don't have any others.  
16 That would be outside of my --  
17 Q. Did you consider whether the CVS  
18 pharmacy at 8000 Euclid Avenue is located  
19 near the Cleveland Clinic's main campus?  
20 A. Yeah, that would be outside of my  
21 expertise.  
22 Q. Okay. So beyond I think it was  
23 the Church's pharmacy you mentioned, you  
24 didn't consider whether any of the other  
25 pharmacies in Section L of your report were

Page 381

1  
2 located near any medical facilities; is  
3 that correct?  
4 A. So I think you said Church's.  
5 Q. I may have gotten it wrong?  
6 A. It's in the New Choice section --  
7 Q. New Choice.  
8 A. -- on 74 and 75.  
9 Q. Okay. So besides the New Choice  
10 Pharmacy, you didn't consider whether any  
11 of the other pharmacies were located near a  
12 medical facility?  
13 A. Correct. That was not part of  
14 the assignment.  
15 Q. And you didn't consider the  
16 population density of the area surrounding  
17 the pharmacies?  
18 A. Correct. That was not part of  
19 the assignment.  
20 Q. So none of the pharmacies you  
21 considered that?  
22 A. Correct. That was not part  
23 assignment.  
24 Q. And just to confirm, you didn't  
25 visit any of the pharmacies, did you?



Page 382

1

2 A. That's correct, I did not visit.

3 That was not asked of me.

4 Q. And you've testified today that

5 you considered manufacturer chargeback data

6 related to these pharmacies, correct?

7 A. That is correct.

8 Q. Okay. And you've also testified

9 that that data is incomplete.

10 Is that also correct?

11 A. I don't recall saying

12 "incomplete."

13 Q. Okay.

14 A. I would say that it -- because

15 the data that I had was a full data set, so

16 it's not to say that it's incomplete.

17 I think if -- maybe what you're

18 referencing is the testimony that it

19 reflects only a certain percentage of the

20 total shipments or the total, yeah, the

21 total shipments or sales made to a county.

22 Q. It doesn't cover all shipments

23 made to each of these pharmacies?

24 A. Correct. I think I characterized

25 that in my report.

Page 383

1

2 Q. And did you also consider the

3 ARCOS data that showed shipments to these

4 stores?

5 A. I want to make sure that -- yes,

6 we did. I think it's shown throughout the

7 report.

8 Q. And just to confirm, that data,

9 though, only covers shipments of certain

10 prescription opioids?

11 A. Correct. That data produced to

12 us had 14 drug codes. I believe only 12

13 were included.

14 Q. So it didn't have all controlled

15 substances?

16 A. Correct. It had 12 drug codes.

17 The two that weren't included were

18 methadone and buprenorphine.

19 Q. In paragraph 42 on page 14 of

20 your report, if you want to turn to that

21 real quick.

22 A. Sorry.

23 Q. Take your time.

24 A. I'm getting cold fingers. All

25 right. Here we are.

Page 384

1

2 Q. The last sentence of paragraph 42

3 states, "Several monitoring programs

4 developed by manufacturers and distributors

5 relied on the percentage of controlled

6 substances to non-controlled substances as

7 a metric."

8 Do you see that?

9 A. I do.

10 Q. Okay. Did you consider that

11 metric in analyzing any shipments made to

12 the pharmacies in Section L of your report?

13 A. I would not have been able to.

14 Q. Why not?

15 A. Because I was not given access to

16 the full sales data for a pharmacy.

17 Q. Did you ask for access to the

18 full sales data?

19 A. I've asked for it and I don't

20 believe that it exists or -- I've asked for

21 it, I should say.

22 Q. Okay. And what was the response?

23 A. And I was told that we didn't

24 have that.

25 Q. Okay. So you're not aware that

Page 385

1

2 CVS and Cardinal have produced complete

3 shipment data for the CVS pharmacy at 8000

4 Euclid Avenue?

5 A. I was not provided with that

6 data.

7 Q. Okay. And did you consider the

8 expert report of Sonya Kwon where she

9 quantified the percentage of controlled and

10 non-controlled substances that were shipped

11 to the CVS at 8000 Euclid Avenue?

12 A. I have not read that report or am

13 I familiar with it.

14 Q. Okay. In analyzing these

15 pharmacies, did you consider whether there

16 was any regulatory or law enforcement

17 action taken against any of the?

18 A. That would be outside of the

19 scope of the report.

20 Q. And did you consider whether

21 there was any regulatory, law enforcement

22 or disciplinary action taken against any

23 pharmacists who worked on those stores?

24 A. Again, that would be outside of

25 the scope of the report.



Page 386

1  
2 Q. Okay. And did you determine  
3 whether any prescription opioids shipped to  
4 these pharmacies were diverted?  
5 A. Again, that would be outside of  
6 the scope of this report.  
7 Q. Okay. So just so we can button  
8 this all up, you considered chargeback data  
9 and ARCOS data related to these stores and  
10 that's it?  
11 A. And also Purdue's 867.  
12 Q. Okay. And Purdue's 867, and that  
13 is the extent of the data that you  
14 considered related to these stores?  
15 A. With the exception of helper  
16 files to help clean them up, whether it's  
17 an NDC code or MMEs. But as far as data  
18 concerning those stores and the  
19 transactions about them, then, yes.  
20 Q. But that's helper files to help  
21 clean up that data, right?  
22 A. Correct.  
23 Q. And you didn't look at any due  
24 diligence files that Cardinal or McKesson  
25 or CVS produced related to these stores?

Page 387

1  
2 A. Correct. That would be outside  
3 of the scope here.  
4 Q. Okay.  
5 MR. HYNES: I have no further  
6 questions. Thank you very much.  
7 THE WITNESS: Thank you.  
8 THE VIDEOGRAPHER: The time is  
9 6:26 p.m. We are now off the record.  
10 (Recess is taken.)  
11 THE VIDEOGRAPHER: The time is  
12 6:27 p.m. We are back on the record.  
13 EXAMINATION BY  
14 MS. PERSIO:  
15 Q. Hi, Ms. Keller. Thank you for  
16 being here today.  
17 A. Thanks for having me.  
18 Q. My name is Joanna Persio. I  
19 represent the Endo and the Par defendants  
20 in this litigation. I have just a few  
21 questions for you.  
22 I think I know the answers to  
23 these, so hopefully I will be brief. I  
24 know it's been a long day so far.  
25 Is it correct that you haven't

Page 388

1  
2 done any analysis as to whether any of the  
3 Endo orders identified in your report as  
4 being flagged by the various compliance  
5 metrics that you have applied were or were  
6 not actually investigated or reviewed by  
7 Endo?  
8 A. That is correct. That would be  
9 outside of the scope of the report.  
10 Q. And you also didn't do that  
11 analysis for any of the Par orders that are  
12 identified in your report; is that correct?  
13 A. That is correct. I didn't review  
14 due diligence records or anything like  
15 that. That would be outside of the scope  
16 of the report.  
17 Q. And the answer would be the same  
18 for the entity that you referred to as  
19 Qualitest; in your report, you didn't do  
20 any review or identification of whether or  
21 not those orders that you flagged for  
22 Qualitest were actually investigated by the  
23 entity you referred to as Qualitest?  
24 A. Correct.  
25 Q. So you have no basis to say

Page 389

1  
2 whether or not Endo or Par or Qualitest in  
3 fact flagged or investigated any of the  
4 orders that you flag for those entities in  
5 your report; is that right?  
6 MS. CONROY: Objection.  
7 A. Yes. That would be outside of my  
8 expertise. I didn't review that.  
9 Q. And you also couldn't say whether  
10 any of the orders for Endo or Par or  
11 Qualitest were or were not legitimate  
12 orders that should have been shipped after  
13 an investigation?  
14 MS. CONROY: Objection.  
15 A. Correct. That would be outside  
16 of the scope.  
17 Q. And you can't say if there are  
18 any specific prescriptions for an Endo, Par  
19 or Qualitest opioid medication that were or  
20 were not legitimate?  
21 MS. CONROY: Objection.  
22 A. Correct. That would not be my  
23 area of expertise.  
24 Q. And you're not offering in your  
25 report or planning to offer any opinion as

Page 390

1  
2 to whether or not Endo's investigations of  
3 any orders or any prescribers who are  
4 flagged in your report were or were not  
5 sufficient; is that right?  
6 A. Correct. I am not an expert in  
7 that.  
8 Q. And you're also not offering or  
9 planning to offer an opinion as to whether  
10 or not any Par's investigations of the  
11 orders or prescribers flagged in your  
12 report were sufficient?  
13 A. Correct.  
14 Q. I assume the answer is the same  
15 for the entity you referred to as  
16 Qualitest?  
17 A. Correct.  
18 Q. And you also can't offer any  
19 opinion as to whether or not Endo could  
20 have in fact stopped any of the orders  
21 flagged by the application of your  
22 compliance metrics or stopped any  
23 particular prescriptions in the real world;  
24 is that right?  
25 MS. CONROY: Objection.

Page 391

1  
2 A. Correct. That is outside of my  
3 expertise and scope.  
4 Q. And you can't offer an opinion as  
5 to whether or not Endo should have stopped  
6 any of those orders or prescriptions; is  
7 that right?  
8 MS. CONROY: Objection.  
9 A. Correct.  
10 Q. And you also can't comment on  
11 those things for Par or Qualitest, correct?  
12 MS. CONROY: Objection.  
13 A. Correct. All that I can talk to  
14 about what could have been done using the  
15 known compliance metrics by -- applied to  
16 the labeler's own data.  
17 Q. But you're not offering any  
18 opinion as to whether or not what was  
19 actually done was adequate or appropriate;  
20 is that right?  
21 A. Correct.  
22 MS. PERSIO: I have no further  
23 questions. Thank you.  
24 THE WITNESS: Thank you.  
25 THE VIDEOGRAPHER: The time is

Page 392

1  
2 6:31 p.m. We are now off the record.  
3 (Discussion off the record.)  
4 THE VIDEOGRAPHER: Time is  
5 6:32 p.m. We are back on the record.  
6 FURTHER EXAMINATION BY  
7 MR. GOLDSTEIN:  
8 Q. Hi, again, Ms. Keller. I'm back  
9 for the remaining five minutes of the  
10 deposition today.  
11 Can you turn back to Exhibit 20,  
12 please. And specifically that's  
13 Mr. Buthusiem's report, and specifically  
14 paragraph 13.  
15 A. Sure.  
16 Q. If you look at the second  
17 sentence of that paragraph, it says, "The  
18 distributor's inventory is comprised of  
19 product purchased over the course of  
20 multiple orders placed with the  
21 manufacturer."  
22 Do you have any reason to  
23 disagree with that statement?  
24 A. I don't have any reason to  
25 disagree with what he has stated, but

Page 393

1  
2 that's what's stated here.  
3 Q. Okay. The next sentence says,  
4 "The chargeback data submitted with respect  
5 to any eligible distributor to downstream  
6 registrant sale does not delineate which  
7 specific distributor to manufacturer order  
8 relates to the chargeback."  
9 Do you have any reason to  
10 disagree with that statement?  
11 (Document review.)  
12 A. I don't understand what the word  
13 "eligible" means, so I don't really know if  
14 I can agree or disagree with this.  
15 And it's also referencing sales  
16 data that, again, we've discussed earlier  
17 that I haven't reviewed fully.  
18 Q. So let me break that up. I'll  
19 represent to you that eligible distributor  
20 to downstream registrant sale simply means  
21 a sale for which a chargeback was issued.  
22 A. Sure.  
23 Q. A chargeback eligible sale.  
24 Okay. Does that make sense?  
25 A. Sure.

Page 394

1

2 Q. Okay. Now based on the data that

3 you've reviewed to date and as you sit here

4 today, do you have any reason to disagree

5 with the sentence that I just read?

6 A. And I just assume that there is

7 an order number, an order ID in both data

8 sets, is there?

9 Q. You assume that there is an order

10 ID in both sets of what?

11 A. Of both the chargeback data and

12 the sales data.

13 Q. That is the same order ID, is

14 that what you're saying?

15 A. I would think that that exists.

16 Q. Okay. And so if that is the

17 case -- sorry. If that is not the case,

18 then you would not be able to delineate

19 which specific distributor to manufacturer

20 order relates to the chargeback?

21 A. I mean, I'd have to look at the

22 data sets again to see whether or not I

23 could trace it or not. Again, you're

24 asking me look at data I haven't fully

25 reviewed.

Page 395

1

2 Q. I'm only asking you about

3 chargeback -- so let me only ask you about

4 chargeback data for the moment.

5 A. Okay.

6 Q. Do you know if chargeback data

7 anywhere reflects which product in

8 circumstances where, as discussed in the

9 sentence immediately prior, where

10 distributor's inventory is comprised of

11 product purchased over the course of

12 multiple orders, okay?

13 A. Okay. I don't know that there is

14 a question there, though.

15 Q. Are you with me so far?

16 A. Yes.

17 Q. You understand the situation I'm

18 talking about is a situation where a

19 distributor's inventory includes product --

20 is comprised of product purchased over the

21 course of multiple orders placed with the

22 same manufacturer?

23 A. Yes. I think maybe let's go back

24 to our example from earlier where you had

25 the two orders.

Page 396

1

2 Q. Sure?

3 A. Okay.

4 Q. Chargeback data is submitted for

5 one of those orders.

6 A. Sure.

7 Q. Are you aware of any information

8 in the chargeback data that identifies

9 which order of the two orders in the

10 distributor's inventory that chargeback

11 data pertains to?

12 A. So the -- I will say what I know

13 that exists in the chargeback data. I can't

14 talk about the inventory system of the

15 distributor.

16 The chargeback has an NDC number,

17 the distributor that shipped it or that

18 submitted it, I should say, to be most

19 correct, as well as an order number and a

20 date.

21 Q. And is it your understanding that

22 the NDC code that's included pertains to

23 the product that's being shipped?

24 A. I would understand the NDC to be

25 the product, yes.

Page 397

1

2 Q. And not a particular order that's

3 being shipped?

4 A. I think you could characterize

5 the NDC is part of a larger order.

6 Q. I'm not sure I follow.

7 The NDC relates to the type of

8 product that's being shipped?

9 A. So I have seen the data, have an

10 order number, let's say one, two, three,

11 four, five, have as part of it, and this is

12 a hypothetical, but I've seen real examples

13 of the data, an order for -- the same order

14 number also have oxycodone, morphine and a

15 hydrocodone product as part of that whole

16 order.

17 Q. And that's all under the same NDC

18 code?

19 A. No, different NDC codes folded

20 underneath one order.

21 Q. Okay. But understood the NDC

22 order only pertains to the product that's

23 being shipped?

24 A. Yes. I think we've talked about

25 that.

Page 398

1  
2 Q. Okay.  
3 MR. GOLDSTEIN: Can I ask one  
4 more question? Thank you.  
5 MR. LEDLIE: Sure.  
6 BY MR. GOLDSTEIN:  
7 Q. So if you turn to figure 1 in  
8 Mr. Buthusiem's report, it's right under  
9 paragraph 24.  
10 A. Yup.  
11 Q. Have you reviewed this figure  
12 before?  
13 A. I've seen it before.  
14 Q. Sorry. That wasn't my one final  
15 question.  
16 (Laughter.)  
17 Q. Do you see it reflected in that  
18 table that there is a Mallinckrodt peculiar  
19 order and a Mallinckrodt chargeback record?  
20 Do you see that?  
21 A. I see those two records on this  
22 document, yes.  
23 Q. And do you see that the order  
24 numbers are different?  
25 A. I do see that.

Page 399

1  
2 Q. And what do you take that to  
3 mean?  
4 A. I mean what I assume, there are  
5 two different systems that have two  
6 different numbering.  
7 Q. And so this is my last question.  
8 Assuming that there are two  
9 different systems with two different  
10 numbering, it would not be possible to  
11 trace a peculiar order to -- that is to  
12 product that is shipped into Cuyahoga or  
13 Summit County and is subsequently the  
14 source of a chargeback request?  
15 MS. CONROY: Objection.  
16 A. I don't agree with that.  
17 Q. Why not?  
18 A. Because our report traces  
19 peculiar orders and chargebacks.  
20 Q. So based on the substance of  
21 what's in your report today, you disagree  
22 with that statement?  
23 A. Yes, I disagree with that  
24 statement based off of my findings in my  
25 report.

Page 400

1  
2 MR. GOLDSTEIN: Okay. Thank you.  
3 THE WITNESS: Thanks.  
4 THE VIDEOGRAPHER: The time is  
5 6:41 p.m.  
6 (Time noted: 6:41 p.m.)  
7  
8  
9  
10  
11 \_\_\_\_\_  
12 LACEY R. KELLER  
13  
14 Subscribed and sworn to before me  
15 this day of 2019.  
16  
17 \_\_\_\_\_  
18  
19  
20  
21  
22  
23  
24  
25

Page 401

1  
2 C E R T I F I C A T E  
3  
4 STATE OF NEW YORK )  
5 : ss.  
6 COUNTY OF WESTCHESTER )  
7  
8 I, ANNETTE ARLEQUIN, a Notary  
9 Public within and for the State of New  
10 York, do hereby certify:  
11 That LACEY R. KELLER, whose  
12 deposition is hereinbefore set forth,  
13 was duly sworn by me, and that the  
14 transcript of such depositions is a  
15 true record of the testimony given by  
16 such witness.  
17 I further certify that I am not  
18 related to any of the parties to this  
19 action by blood or marriage; and that I  
20 am in no way interested in the outcome  
21 of this matter.  
22 IN WITNESS WHEREOF, I have hereunto  
23 set my hand this 14th day of June, 2019.  
24  
25 \_\_\_\_\_  
ANNETTE ARLEQUIN, CCR, RPR, CRR, RSA

Page 402	Page 404
<p>1</p> <p>2 INDEX</p> <p>3</p> <p>4 WITNESS PAGE</p> <p>5</p> <p>6 LACEY R. KELLER</p> <p>7 MS. LEVY 12, 314</p> <p>8 MS. LUCAS 203</p> <p>9 MS. DEAN 263</p> <p>10 MR. LAVELLE 270</p> <p>11 MS. O'GORMAN 300</p> <p>12 MR. HAMMOUD 320</p> <p>13 MR. GOLDSTEIN 338, 392</p> <p>14 MR. HYNES 377</p> <p>15 MS. PERSIO 387</p> <p>16</p> <p>17 INDEX OF EXHIBITS</p> <p>18 DESCRIPTION PAGE</p> <p>19</p> <p>20 Keller Exhibit 1, Track 1 15</p> <p>21 Defendants' Second Amended Notice</p> <p>22 of Oral Videotaped Deposition of</p> <p>23 Lacey R. Keller</p> <p>24</p> <p>25 Keller Exhibit 2, List of 17</p> <p>documents that respond to request</p> <p>1 in Exhibit A on Exhibit 1</p>	<p>1</p> <p>2 INDEX OF EXHIBITS (Cont'd.)</p> <p>3 DESCRIPTION PAGE</p> <p>4 Keller Exhibit 11, Press release 241</p> <p>5 entitled "FDA reports quality</p> <p>6 problems for data provided by the</p> <p>7 firm IQVIA that were used to</p> <p>8 inform estimates for some</p> <p>9 controlled substances"</p> <p>10 Keller Exhibit 12, Report on 249</p> <p>11 Script.SQL, not Bates-stamped</p> <p>12</p> <p>13 Keller Exhibit 13, Document 277</p> <p>14 produced in native format</p> <p>15 beginning with Bates-stamp</p> <p>16 MNK-TT_0001315847</p> <p>17 Keller Exhibit 14, Email chain 281</p> <p>18 beginning with email dated</p> <p>19 9/23/16 from K. Harper to</p> <p>20 McKenzie, Bates-stamped</p> <p>21 MNK-TT_0001315844 through 5846</p> <p>22 Keller Exhibit 15, Email chain 287</p> <p>23 beginning with email dated</p> <p>24 10/31/11 from Oriente to Nichols,</p> <p>25 Bates-stamped MCKMDL006332908</p> <p>through 2910</p> <p>Keller Exhibit 16, Email chain 292</p> <p>beginning with email dated</p> <p>10/31/11 from Lai to Oriente and</p> <p>others, Bates-stamped</p> <p>MCKMDL00626683 through 6685</p> <p>Keller Exhibit 17, Purdue Pharma 304</p> <p>L.P. document Bates-stamped</p> <p>PDD1503450011 through 0024</p>
Page 403	Page 405
<p>1</p> <p>2 INDEX OF EXHIBITS (Cont'd.)</p> <p>3 DESCRIPTION PAGE</p> <p>4 Keller Exhibit 3, Gryphon 19</p> <p>5 Strategies Invoice dated 5/30/19,</p> <p>6 Bates-stamped</p> <p>7 OPIOIDMDL_KELLER_000036 through</p> <p>8 35</p> <p>9 Keller Exhibit 4, Resume of Lacey 30</p> <p>10 R. Keller, not Bates-stamped</p> <p>11</p> <p>12 Keller Exhibit 5, Expert Analysis 60</p> <p>13 of Lacey R. Keller, not</p> <p>14 Bates-stamped</p> <p>15</p> <p>16 Keller Exhibit 6, Spreadsheet, 136</p> <p>17 not Bates-stamped</p> <p>18</p> <p>19 Keller Exhibit 7, Expert Analysis 157</p> <p>20 - Addendum: Lacey R. Keller</p> <p>21</p> <p>22 Keller Exhibit 8, "Corrections to 179</p> <p>23 Expert Analysis," prepared by</p> <p>24 Lacey R. Keller, not</p> <p>25 Bates-stamped,</p> <p>Keller Exhibit 9, Word document 184</p> <p>prepared by Keller, not</p> <p>Bates-stamped,</p> <p>Keller Exhibit 10, Expert 237</p> <p>Analysis - Errata Sheet: Lacey R.</p> <p>Keller, not Bates-stamped,</p>	<p>1</p> <p>2 INDEX OF EXHIBITS (Cont'd.)</p> <p>3 DESCRIPTION PAGE</p> <p>4 Keller Exhibit 18, Document 307</p> <p>5 produced natively, Bates-stamped</p> <p>6 PPLP004449246</p> <p>7</p> <p>8 Keller Exhibit 19, Letter on 316</p> <p>9 Kirkland &amp; Ellis letterhead dated</p> <p>10 8/31/18 from Welch to Donna Welch</p> <p>11 to the Plaintiffs' Executive</p> <p>12 Committee, not Bates-stamped</p> <p>13</p> <p>14 Keller Exhibit 20, Report of 338</p> <p>15 Edward J. Buthusiem of Berkeley</p> <p>16 Research Group, not Bates-stamped</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>



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2       ERRATA SHEET FOR THE TRANSCRIPT OF:  
3       CASE NAME: OPIOID LITIGATION  
4       DATE:     JUNE 13, 2019  
5       DEPONENT: LACEY R. KELLER - CONFIDENTIAL  
6       Pg. Ln.   Now Reads   Should Read   Reason  
7       —   —   —       —       —  
8       —   —   —       —       —  
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16      —   —   —       —       —  
17  
18                \_\_\_\_\_  
19               LACEY R. KELLER  
20       SUBSCRIBED AND SWORN BEFORE ME  
21       THIS \_\_\_\_ DAY OF \_\_\_\_\_ 2019.  
22  
23       \_\_\_\_\_  
24       (Notary Public)  
25       MY COMMISSION EXPIRES: \_\_\_\_\_